

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT STIPULATION OF FACTS AND TRANSCRIPT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,018

899

BATTEN & CO., INC.,
MUTUAL FUNDS OF AMERICA,
and
FRANKLIN L. BATTEN,

Petitioners,

v.

THE SECURITIES AND EXCHANGE COMMISSION,
and
THE UNITED STATES OF AMERICA,

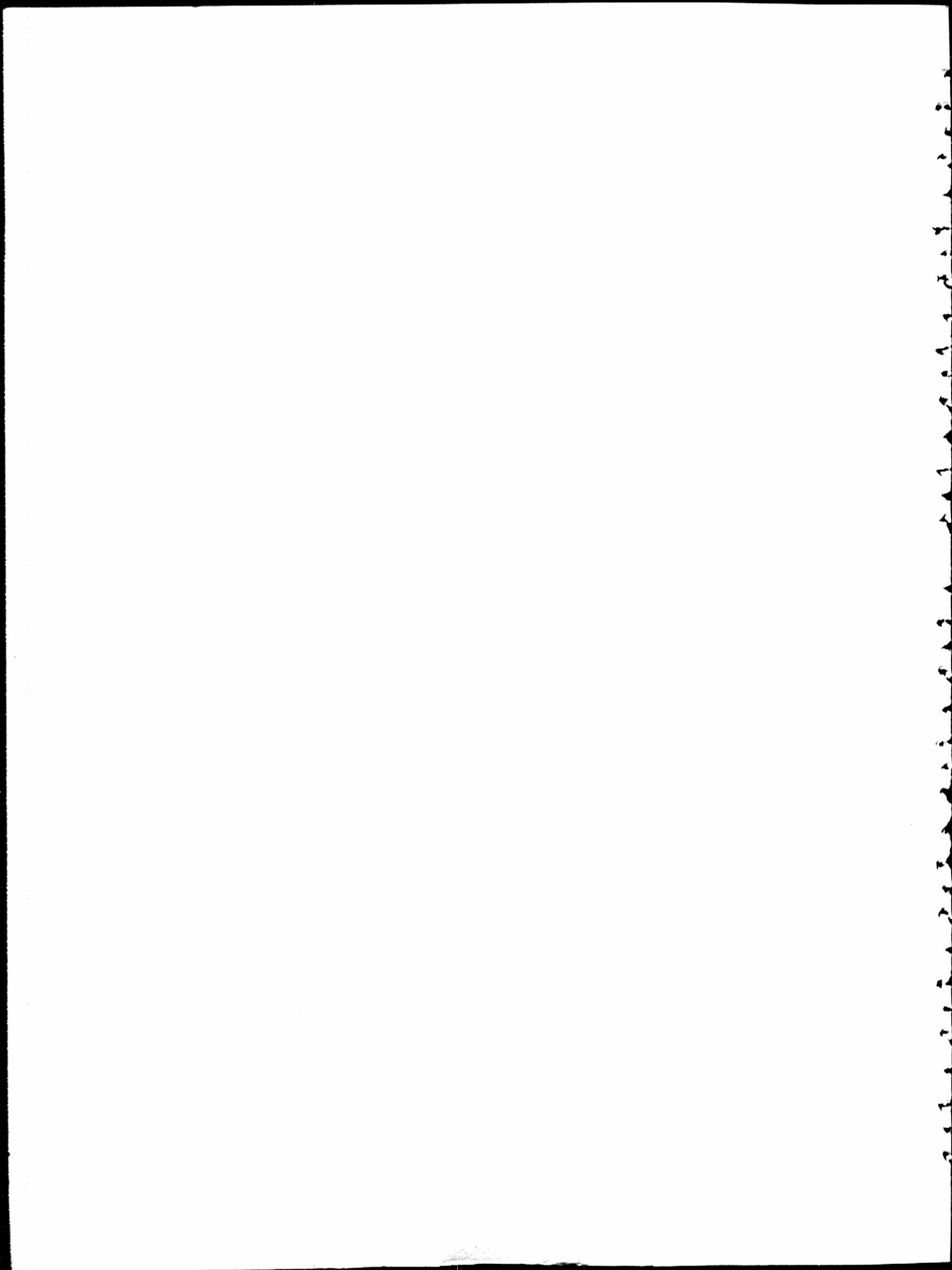
Respondents.

Petition for Review of Findings, Opinion and Order of
Securities and Exchange Commission Revoking
Petitioners' Broker-Dealer Registrations

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 14 1964

Nathan J. Paulson
CLERK



(i)

JOINT STIPULATION

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BATTEN & CO., INC.,
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and FRANKLIN L. BATTEN,

Petitioners,

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THE SECURITIES AND EXCHANGE
COMMISSION
and THE UNITED STATES OF AMERICA

Respondents.

JOINT STIPULATION OF
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IT IS HEREBY STIPULATED AND AGREED, by and between
counsel for all parties:

1. With the consent of the Court, the following Joint Stipulation of Facts and Transcript may be printed herein in lieu of a Joint Appendix.

2. Pursuant to Rule 16(f) of the Rules of this Court, a printed copy of the Commission's decision and order of May 29, 1963 (Securities Exchange Act Release No. 7086) will be utilized in the Joint Stipulation of Facts and Transcript. By order dated November 28, 1962 the Commission permanently suspended exemption from registration under the Securities Act of 1933 pursuant to Regulation A thereunder with respect to the public offering of Saber Boats stock after finding that the offering circular contained untrue and misleading statements concerning the lack of legal title of the issuer to the property of which it claimed ownership, and the method of distribution and the prices at which the stock would be offered to the public; that the report of completion of distribution filed with the Commission was incorrect and misleading; that certain sales were made without use of an offering circular; and that the offering was made in violation of the anti-fraud provisions of the securities acts. Pursuant to Rule 16(f) of this Court, a printed

(ii)

copy of said decision and order (Securities Act Release No. 4558) will be utilized in the Joint Stipulation of Facts and Transcript. Reference to said decisions and orders in the briefs of the parties, as well as all other record references will be to the page number of the Joint Stipulation of Facts and Transcript or the exhibit number thereto.

3. Any party may cause to be printed at his own expense and added to the Joint Stipulation of Facts and Transcript any other part of the certified record upon which the order herein now under review is entered.

Batten & Co., Inc.
Mutual Funds of America, Inc.
Franklin L. Batten
By counsel

Roland D. Hartshorn
519 Mills Building
Washington, D. C.

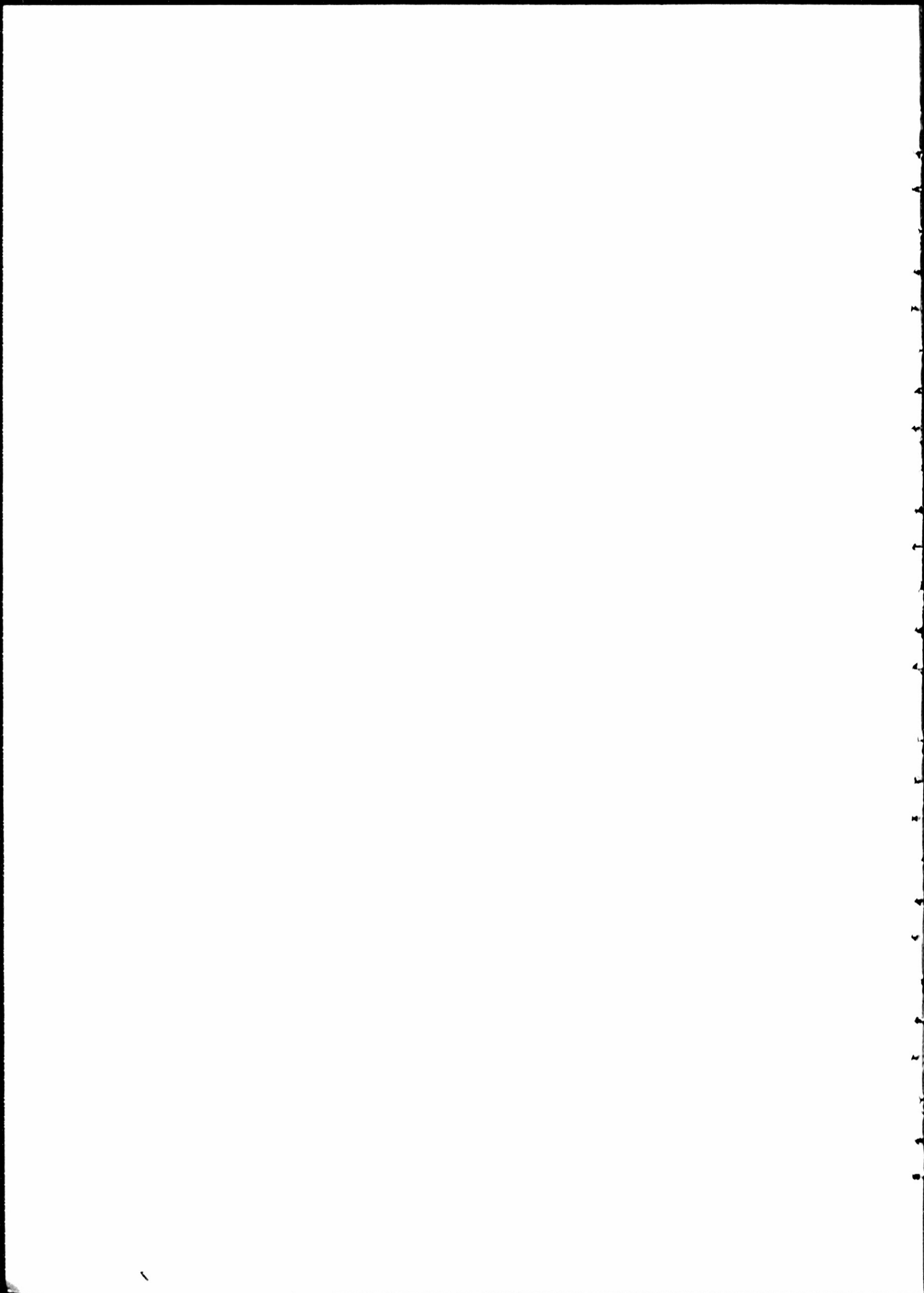
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3	Attestation of Nancy H. Mattila, dated March 10, 1961, that no registration statement pursuant to the Securities Act of 1933 had been filed with the Commission under the name of Saber Boats, Inc. 8 Ex.
4	Form 2-A Report pursuant to Rule 260 of Regulation A dated May 12, 1960 and filed May 16, 1960 relating to an offering of stock of Saber Boats, Inc. 9 Ex.
5	"Market Research Letter" dated June 14, 1960, from Batten & Co., Inc. and Report of Batten & Co., Inc. entitled "Boat Stocks are Growth Stocks" 14 Ex.
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JOINT STIPULATION OF
FACTS AND TRANSCRIPT

No. 18,018

I. THE PROCEEDINGS

1

By order dated November 21, 1960 (Joint Ex. # 7) the Securities and Exchange Commission (the "Commission") directed the commencement of public proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Act") to determine:

(1) Whether, pursuant to Section 15(b) of the Act, it was in the public interest to revoke the registration of Batten & Co., Inc. ("registrant");

(2) Whether, pursuant to Section 15(b) of the Act, pending final determination of the question of revocation, it was necessary or appropriate in the public interest or for the protection of investors to suspend the registration of the registrant;

(3) Whether, pursuant to Section 15A(1)(2) of the Act, it was necessary or appropriate in the public interest or for the protection of investors, or to carry out the purposes of said section, to suspend for a period not exceeding twelve months or to expel the registrant from membership in the National Association of Securities Dealers, Inc.; and

- 2 (4) Whether, within the meaning of Section 15A(b)(4) of the Act, the Commission should find that Franklin L. Batten, also known as Frank L. Batten ("Batten") should be a cause of any order of revocation, suspension or expulsion entered herein.

The matters put in issue by the Commission's order were:

(1) Whether registrant and Batten willfully violated Section 5(a) and (c) of the Securities Act in that they directly and indirectly, made use of the mails and the means and instruments of transportation and communication in interstate commerce to sell and to offer to sell the Class B non-voting stock of Saber Boats, Inc. when no registration statement had been filed or was in effect as to such security.

(2) Whether registrant and Batten willfully violated Section 17(a) of the Securities Act in that, in the offer and sale of securities by use of the means and instruments of transportation and communication in interstate commerce, and of the mails, registrant and Batten employed devices, schemes and artifices to defraud; obtained money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and engaged in transactions, practices and a course of business which would and did operate as a fraud and deceit upon purchasers.

- 3 (3) Whether registrant and Batten willfully violated Section 10(b) of the Act and Rule 17 CFR 240.10b-5 prescribed by the Commission under said section in that registrant and Batten, directly and indirectly by use of the mails and means and instrumentalities of interstate commerce, in connection with the purchase and sale of securities, employed devices, schemes and artifices to defraud; made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading, and engaged

in acts, practices and a course of business which would and did operate as a fraud and deceit upon certain persons.

(4) Whether registrant willfully violated Section 10(b) of the Act and Rule 17 CFR 240.10b-6 prescribed by the Commission under said section in that registrant, directly or indirectly, by use of the mails and the means and instrumentalities of interstate commerce, employed manipulative, deceptive and other fraudulent devices and contrivances as defined by Rule 17 CFR 240.10b-6 and Batten aided, abetted, counselled, commanded, induced and procured such violations.

(5) Whether registrant willfully violated Section 15(c)(1) of the Act and Rule 17 CFR 240.15c1-2 prescribed by the Commission under said section in that registrant made use of the mails and the means and instrumentalities of interstate commerce to effect transactions in and to induce the purchase and sale of securities, otherwise than on a national securities exchange, by means of manipulative, deceptive and other fraudulent devices and contrivances as defined by Rule 17 CFR 240.15c1-2, and Batten aided, abetted, counselled, commanded, induced and procured such violations. 4

(6) Whether registrant willfully violated Section 17(a) of the Act and Rule 17 CFR 240.17a-3 prescribed by the Commission under said section in that registrant made certain false entries in certain of the books and records relating to its business and required to be made and kept current by said rule, and Batten aided, abetted, counselled, commanded, induced, and procured such violations.

Prior to the hearing, respondents in that proceeding (Petitioners herein) entered into a stipulation of facts (Joint Ex. # 8) with the Division of Trading and Exchanges in which they agreed that there were probable violations of the registration and record-keeping provisions specified in the orders for the proceedings and consented to the suspension of the registration of the registrant as well as the other respondent company named in the proceedings. On December 14, 1960, the Commission issued its order suspending these registrations until final determination of the issue of revocation. 5

Pursuant to notice, a hearing was held in Washington, D.C. before the Hearing Examiner. The Division of Trading and Exchanges were represented by counsel. The registrant and Franklin L. Batten, individually, were represented by Batten. All parties were afforded full opportunity to be heard and examine and cross-examine witnesses.

During the hearing, the Hearing Examiner granted an application by the Division to amend the order for the proceedings (Joint Exhibit # 1). The parties also agreed that the record developed in the hearing in the Matter of Saber Boats, Inc., File No. 24 W-2344, which concerned itself with the real property ownership of Saber Boats, Inc. would be incorporated into that hearing.

At the conclusion of the presentation of evidence, opportunity was afforded the parties to state their positions orally on the record. Oral argument was waived.

Opportunity then was afforded the parties for the filing of proposed findings of fact and conclusions of law, or both, together with briefs in support thereof. Proposed findings and a supporting brief was submitted by the Division.

6 The Hearing Examiner recommended that the registration of Petitioners, BATTEN & CO. and MUTUAL be revoked in the public interest for violations of the Securities Act of 1933 and Exchange Act of 1934 and rules thereunder to which exceptions were made. The Commission entered such order on May 29, 1963, revoking the broker-dealer registrations of BATTEN & CO. and MUTUAL and named BATTEN as the cause of said revocation. Objections were made to this Order and the parties hereto have filed Agreed Issues.

II. STATEMENT OF FACTS

1. Registrant, a District of Columbia corporation, was registered with the Commission as a broker-dealer, pursuant to Section 15(b) of the Act and had been so registered since October 23, 1959. It also was a member of the National Association of Securities Dealers, Inc., a national securities association registered pursuant to Section 15A of the Act. Mutual, a Maryland corporation, had been so registered since May 30, 1958.

2. Batten was president, treasurer, director and the owner of 99% of the common stock of the registrant and was president, treasurer, director, and the owner of 90.9% of the common stock and of 100% of the preferred stock of Mutual.

3. Saber Boats, Inc., ("Saber Boats") filed a notification and offering circular with the Commission on January 22, 1960 and commenced a public offering of its common stock on February 25, 1960. The offering consisted of 106,875 shares of Class B nonvoting common stock and 2,500 shares of Class A voting common stock. Of the Class B stock, 102,000 shares were offered to the public for the benefit of the issuer at the announced price of \$2.00 per share; and 4,875 shares were offered to the public for the benefit of Batten at the market. All of the 2,500 shares of Class A common stock also were being offered for Batten's benefit at the market. The registrant entered into an underwriting agreement with Saber Boats on a best-efforts basis. (Joint Exhibit #2). 7

4. The shares were offered on the basis of a claimed exemption from registration under Section 5 of the Securities Act pursuant to the provisions of Regulation A of the General Rules and Regulations issued by the Commission pursuant to the provisions of that Act. No registration statement was filed with the Commission covering the offering of said Saber Boats stock. (Joint Exhibit #3).

5. On May 16, 1960, Saber Boats and the registrant jointly filed a Form 2-A report, pursuant to Rule 260 of Regulation A. (Joint Exhibit #4).

6. The registrant commenced trading in the stock of Saber Boats on May 3, 1960 and on that date quotations for Saber Boats stock in the National Daily Quotation Sheets were inserted for the first time.

7. The Daily Quotation Sheets, for the period from May 3, 1960 to June 30, 1960, were published for a total of 42 days and of this total, the registrant inserted bid listings for a total of 35 days. Also, the total number of days the high bid by one or more dealers was raised above the high bid of the previous day by all other dealers was 14. The total number of days the registrant's bid alone was high and had

[J.S. 9]

8 been raised above the high bid of the previous day by any other dealer was 4. The total number of days the bid of the registrant and one or more other dealers was high and had been raised above the high bid of the previous day by any other dealer was 7. On 25 days during the period the registrant was in the group inserting the highest bids.

A. Transactions in Saber Boats stock.

8. At issue is the legal effect of certain transactions in Saber Boats stock entered into by the registrant and Batten during the underwriting period. The facts relating to each will be treated separately.

The evidence of the James and Ethel Sines transactions was as follows:

9. The books and records of the registrant, including the customer ledger account card, order and execution form, and the cash receipts and disbursements journals indicate that on April 28, 1960, James and Ethel Sines purchased 1,000 shares of Saber Boats stock at \$2 a share for a total of \$2,000 and payment was received by the registrant on May 4, 1960. The records further indicate that on May 4, 1960, at Batten's direction, the registrant repurchased these stocks as principal at \$2 a share for a total of \$2,000. Batten also directed that the stock, after the repurchase entries, be put into registrant's trading account.

10. Mr. and Mrs. Sines are Batten's brother-in-law and sister-in-law by marriage and had no knowledge of their alleged transactions in the purchase and sale of Saber Boats stock until some time in October 1960, when the Commission first started its investigation.

9 James and Ethel Sines both testified that neither of them endorsed the check which was issued by the registrant, endorsed in their names, and deposited to the registrant's bank account as purported payment for the sale of such stock back to registrant.

Mr. Sines testified that he notified Batten a few days before he was requested to appear at the Washington Regional Office in connection with the then pending investigation of registrant's activities, and their conversation regarding that appearance was as follows:

Q. Did you have any conversation with Mr. Frank Batten, relating 10
to the nature of the testimony which you would give in the event you
were asked certain questions? A. Well, to the best of my knowledge,
he said that it was nothing; that all I had to do was say I bought it and
sold it. Me, being ignorant on stocks and bonds, I did not see no harm
in that and so I tried to answer the questions -- the first day -- to try
to help him out, and -- which was false, the first testimony that I gave.

Q. And that testimony was given under oath, was it not?

A. That it was.

Q. Now, were you accompanied by an attorney on that occasion?

A. I was.

Q. Now, when you talked with Mr. Batten, prior to the day you 11
came to testify, did you tell him at that time that you would go along
with this idea of stating that you had actually bought Saber Boat stock
and then you had sold it? Is that correct? A. I did.

Q. Were there any ramifications on this proposed statement of 12
yours. That is, were you going to tell us that you had paid some money
down and how -- is that correct? A. That is correct.

Q. How much money were you to say that you had paid down?

A. Well, that was just a figure that I -- when the question was stated
to me in the first testimony, that I had made up.

Q. And what were you to say with respect to the balance of the
money? Where was that to come from? A. Well, Mr. Batten was
going to make a loan to me, if I remember correctly. It has been so
long ago, I don't remember the finer details on this.

Q. Do I understand this correctly; that at this conversation you 13
were to tell us that when you bought the stock you had paid part in cash
and that Mr. Batten was going to loan you the balance of the money.
Is that correct? A. I believe it is.

Q. And this is what -- is it not what Mr. Frank Batten asked you
to tell the Commission when you came down to testify? A. He did
not tell me to. All he was mainly interested in was to go along with the

[J.S. 15]

buying and the selling part of it. Of course, when you asked me questions pertaining to how did I buy this stock, I had to make up the story.

Q. So this in part at least was -- A. To go along.

Q. In order to make it plausible? A. To make it go along with the rest -- that I did buy and sell it.

14 Q. And you did appear before the Commission. That is, at the Washington Regional Office of the Commission, and you did testify along these lines, is that not correct? A. I did.

Q. Mr. Guerry Moore, the attorney, sat with you while you were giving this testimony, did he not? A. He did.

Q. What if anything happened after that, on that same day with respect to this alleged transaction in Saber Boat stock, and the testimony you had given? A. Well, after I had given testimony, I was going down and I said, "I have done something wrong." And I said, "I ought to go back up there and tell the truth". And Mr. Moore, if I remember correctly, said, "Did you not tell the truth"? And I said, "No." And I said, "Did you not know?" And he said, "No." He said, "If I would have, I would not have represented you." And I said, "Well, I thought you knew", and so I went on home after that, but this was all in my mind and the next day, I went to work, and I just could not work knowing that I had lied under oath, and so I thought it best that I come back down and tell the truth for everybody that was concerned.

15 Q. And what did you do after that? A. I called Mr. Ward and I made an appointment with him to come down and make a second testimony and Mr. Ward said that I could come down at 1:00 o'clock that particular day, I believe; that I could give the second testimony. Or he would talk to me -- he did not know what my nature of business was. I just wanted to talk with him.

Q. And did you, for the purpose of refreshing your recollection, is it not a fact that your first testimony was on October 10, 1960 and your second testimony was on October 11, 1960? A. It was. It was the following day.

Q. Yes.

And you did then, on October 11, 1960, again appear at the Washington Regional Office and give testimony under oath, did you not?

A. I did.

Q. And I was present at that time, was I not? A. You were.

Q. Were you accompanied by counsel at that time? A. No. I was not.

Q. Now, will you state, to the best of your recollection, what you told us on that day, the second day you appeared and testified with respect to the transaction or the alleged transaction, in Saber Boat stock? A. Do you mean the whole story, from beginning to end?

16

Q. Yes. A. Well, at first I said that I wanted to make another testimony; that the first one was incorrect and if I could not square myself with you people, I could square myself with God, and my conscience would be relieved, and so you give me the right to go ahead and give second testimony on behalf of Batten and Company, which I stated that everything in the first was just the opposite of the answer that I had given you. That I had not had no transactions with Mr. Batten on Saber Boat, as far as the buying and selling of it, and that the whole story that I made up was with keeping the people that work for him in mind and his wife; that innocent people may be hurt. That is the reason I gave the first testimony and by giving the second testimony, I figured it would be just as well as to tell the truth on this, and so I just said that -- I told the truth and went down and said I had no transactions, and I did not buy nor did I sell; nor had I seen any of these confirmations nor checks. I just wanted to tell the truth.

On Cross-examination, Sines testified:

17

Q. Mr. Sines, regarding the statement as to whether you bought the stock or not, aren't my exact words this: "As far as I am concerned, you purchase the stock."? A. I can't answer it. You may have. I can't say for sure. All I do know is that you did at one time or another -- I don't know the exact time or date -- say that I bought it

[J.S. 20]

and to say that I bought it and sold it and I believe I did tell you if I had known something about it, I may have could helped you.

MR. BATTEN: No further questions.

18

Mrs. Sines testified on direct examination:

Q. All right. Will you state whether or not you had ever paid any money to Batten and Company or Frank Batten for any stock? A. No. Never.

Q. Will you state whether or not you ever signed a check made out to your husband for \$2,000 which was drawn on Batten and Company? A. No.

Q. Will you state whether or not, after you had been contacted by Mr. Ward, that Mr. Batten, Mr. Frank Batten, in your presence, asked your husband to tell the Securities and Exchange Commission that he, your husband, that is, had purchased and sold Saber Boat stock when, as a matter of fact, such had not been the case? A. He asked him to.

Q. He asked him to do that? A. Yes.

Q. You heard him ask him? A. I heard that. I did not hear the whole conversation but I heard that.

19

Mrs. Sines testified on cross-examination:

Q. Mrs. Sines, what is your age? A. Twenty-one.

Q. So, being twenty-one, it is very logical that you would not have bought many stocks, since you have to be twenty-one to buy stock.

A. I have never bought stock. I am not even familiar with stock.

Q. I show you this exhibit here, a check written to James Sines, signed by Franklin L. Batten, Batten and Company, dated May 9, 1960. Isn't it possible, Mrs. Sines, that you might have seen that check in Hospital Room 4-F 18, on the evening of May 9? A. It is possible, but I don't remember seeing.

20

Q. You don't remember? A. No.

Q. Isn't it true too, that the only conversation that I have had with you regarding this matter, is I asked you what did you write to the Securities and Exchange Commission and you told me you could not remember and I asked you several times?

HEARING EXAMINER: Wait. Let her get through.

Do you recall that?

THE WITNESS: Do you mean after?

MR. BATTEN: On the telephone, yes. On the telephone, here, in the last few months, since October 1, 1960. I asked you several times.

THE WITNESS: Yes.

Q. (By Mr. Batten) To tell me what you wrote to the Securities and Exchange Commission? A. That is true.

Q. That has been the length and breadth of all our conversation regarding Saber Boats? A. That is true.

Q. You said you could not remember? A. Yes.

Q. Mrs. Sines, here is a very important point.

Could you not also be a little wrong on this.

If you overheard your husband and myself talking, you said you overheard us one evening, I believe, in the living room -- might I not have said, "As far as I am concerned, you purchased the stock, Jimmie." 21

A. You may have said it.

Q. Well, isn't that what I said?

HEARING EXAMINER: If you remember.

If you recall it.

Q. If you recall it. A. That we might have purchased it?

Q. As far as I am concerned, you purchased the stock.

A. You may have said it.

Q. Did you ever hear me say that? Yes or no? A. No, I did not.

Q. You don't recall ever hearing me say that? A. No.

11. Batten testified in respect to the Sines transaction that the Sines did not order, pay for or sell the stock which he placed in their account. He further stated that he intended to make a gift of the stock to Mr. and Mrs. Sines but that at the time of the purchase his wife had a serious accident and he decided not to complete the gift. He was not 22

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sure who endorsed the check nor was he sure how he paid for the stock. He further testified:

23 Q. Now, Mr. Batten, in connection with the Sines, after the investigation was started by this Division of this matter, did you contact the Sines? A. Yes, I contacted them. My wife contacted them daily.

Q. Did you contact them, sir? A. Yes, we have contact with them almost daily.

Q. Did you discuss this transaction, sir? A. Yes, I did.

Q. What did you relate to them? A. Well, I don't recall now. I indicated that this transaction had been made in their account and that
24 I had cashed the check and they would probably be called, I think.

Q. Is that all you recall? A. That is all I recall.

Q. Did you tell them anything at all to state if they were asked any questions concerning this transaction? A. No, I did not.

Q. What did you tell them, anything? A. I told them as far as I was concerned he had bought the stock; that is the only statement I made. I didn't tell them to tell any lies or fabricate any stories.

Q. Did you tell them to tell just the truth? A. I didn't tell him what to tell.

Q. That area was not mentioned whatsoever; is that correct?
A. That is right.

25 Q. All right. Then I will ask you, sir: Did you at this time or any other time tell Mr. Sines to relate to the Commission that he did in fact
26 make a purchase of this stock in question? A. I told him as far as I was concerned he made a purchase.

Q. Did you, in fact, sir? A. I told him that I had paid for the stock for him.

Q. Will you answer my question, sir? A. Yes.

MR. SHARP: Would you read my question back?

(Question read: Did you at this time or any other time tell Mr. Sines to relate to the Commission that he did in fact make a purchase of this stock in question?")

THE WITNESS: I don't recall.

BY MR. SHARP:

Q. Would you recall if that was the case? A. I think my words, Mr. Sharp, again, I say as far as I was concerned he had made a purchase.

Q. That is your version, but with respect to that question your answer is still what, sir? A. I don't recall.

12. The Hearing Examiner credited the testimony of Mr. and Mrs. 27 Sines as to the alleged transaction and their discussions with Batten and Petitioners entered their objection as to this finding.

The Evidence of the James B. Pierce transaction was as follows:

13. The books and records of the registrant, including the customer ledger account card, order and execution form, and the cash receipt and disbursements journals, indicate that on April 29, 1960, James B. Pierce purchased 500 shares of Saber Boats stock at \$2 a share for a total of \$1,000 and payment was received on May 4, 1960, by the registrant. The records further indicate that on May 4, 1960, the registrant repurchased these stocks as principal at \$2 a share for a total of \$1,000.

14. James B. Pierce, of Williamston, North Carolina, is a life-long friend of Batten and some time in April, 1960, Batten visited Pierce in North Carolina and discussed a possible purchase of Saber Boats stock by Pierce. Pierce told Batten he did not have sufficient funds at that time to make a purchase, but if Batten wanted to buy some shares for him, Pierce would pay him back. Later, in a telephone conversation, Pierce was told by Batten that 500 shares were purchased for him. At some time around May 4, 1960, Batten called him again and asked Pierce if he had the money for the stock. Pierce said he did not have it. Batten stated that they had better sell the shares since Batten needed the money. Pierce agreed to this action. Pierce signed no loan agreement and no provisions were made to repay the loan.

15. On May 4, 1960, Batten caused the registrant to repurchase 500 shares at the same price at which it was sold to Pierce, \$2 a share,

28 and the shares were placed in the registrant's trading account. Batten had a check, dated May 9, 1960, drawn to Pierce's name for \$1,000. Batten admitted he caused the check to be endorsed in Pierce's name and deposited in the registrant's account. Batten did not have the authority nor power of attorney to endorse Pierce's name on the check. Pierce testified that he received a confirmation of the transaction from the registrant, but that it came substantially after the purchase transaction.^{1/} He placed the time as four or five weeks before October 18.

The evidence of the Kenneth B. and Lorraine Duke transaction was as follows:

16. The books and records of the registrant, including the customer ledger account card, order and execution form and the cash receipt and disbursement journals indicate that on May 2, 1960 Kenneth B. and Lorraine Duke purchased 1,000 shares of Saber Boats stock at \$2 a share, for a total of \$2,000 and payment was received on that day by the registrant. It is also shown that on May 20, 1960 the registrant repurchased these shares as principal at \$2.75 a share for a total of \$2,750. A check was drawn to the order of Duke on May 31, 1960 for \$2,750 in settlement of his purported sale.

Batten testified as follows with respect to this proposed transaction:

29 Q. Mr. Batten, at this time, I hand you Division's Exhibit No. 19 which consists of a series of papers and two cancelled checks relating to transactions of Mr. Kenneth Duke. With that to help refresh your memory, would you in your own words, explain Mr. Duke's transactions in Saber Boat stock purchased through Batten and Company? A. Mr. Duke is, or was, rather, a salesman of Batten and Company and also an officer and director of Mutual Funds of America.

^{1/} Practically all of the transactions hereinafter mentioned were evidenced by confirmations sent through the mail. Unless otherwise indicated, all transactions hereinafter mentioned involve the use of the mails or interstate facilities, thus bringing the transactions discussed within the jurisdictional requirements of the securities acts.

I have known Mr. Duke for some five years. He owns stock -- he did, at that time. I am sorry. He did own stock in Mutual Funds of America, also. I had an underwriting, as we all know, named Saber Boats, Inc., and inasmuch as he was a salesman, he was entitled to sell the said shares. Mr. Duke received the prospectus. I believe we call it the offering circular in regard to Regulation A. He received the offering circular on Saber Boats, and I don't believe he sold any as a salesman. I talked with him about the stock, and told him that he ought to get some of this stock and this was in February or March of 1960 and in subsequent conversations with Mr. Duke, I mentioned this stock to him and nothing transpired. He did not place an order to purchase any of it. 30

On May 2, 1960, I confirmed 1,000 shares in the name of Kenneth B. and Lorraine Duke and paid for it myself.

Sometime later, the stock certificates were sent to Mr. Duke's home, registered in his name.

Q. Did Mr. Duke order the stock from you? A. No, sir.

Q. Pardon? A. No, sir.

Q. But you did send the stock certificates to his home, made out in his name? A. Yes, sir. The stock was sold --

Q. Wait. Mr. Duke got the stock certificates. What happened then? Did he make payment for it? You said you had paid for it?

A. That had already been paid for. 31

Q. Did he reimburse you for the payment? A. No, he did not.

Q. After he received the stock certificates, what transpired?

A. The stock was sold.

Q. How did you get the stock back from Mr. Duke? A. He sent it back in.

Q. Did you ask for it or did he send it voluntarily? A. He sent it back in -- I think my cashier called him.

Q. What was the reason she asked for the stock back? A. I think that -- well, we typed it up, I believe, to be made in three forms. I

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understood it was sent out to him at home. It should not have been sent to him and so we bought it back into the trading account at two and three quarters -- I see -- on May 20, and what other questions have you that concern the transaction?

Q. You bought them back in? A. Yes. That is the transaction.

Q. Let's direct our attention to the two cancelled checks contained in Exhibit No. 19. A. On May 31, a check was issued in the amount of \$2,750.00.

Q. What was that for? A. That was the proceeds in the account of Kenneth B. Duke.

32 Q. From the sale of Saber? A. Yes, from the sale of Saber.

Q. Who did that check go to? A. I held the check for several days, thinking that Mr. Duke would be in. I held it for several days, thinking that Mr. Duke would be in and endorse it. He did not come in for several days. I cashed the check and deposited \$2,000.00.

Q. Who endorsed the check, Mr. Batten? A. I did.

Q. Did you have authority from Mr. Duke to do that? A. No, sir.

Q. You had no power of attorney? A. No, sir.

Q. Who guaranteed it? A. Who guaranteed it?

Q. No guarantee? A. No.

Q. There is a further endorsement in it, "To the deposit of Batten and Company credit." A. That is right.

Q. And you say that was for the sale, the proceeds from the sale of the 2,000 shares? A. Right.

33 Q. Now, this prior check -- pardon me -- a later check here, could you explain the \$750 check? A. Yes. This \$2750.00, I took my \$2,000 back that I put into Mr. Duke's account and the other \$750 I put back in Mr. Duke's account and then issued a check later, when he did not come in for the \$750, to him, which he cashed himself.

Q. In essence, what you are saying is you gave Mr. Duke the profit between the \$2.00 price and the price you bought it back in at? A. Yes, sir.

Q. This check for \$750 represents the difference between the two prices and that is profit on the transaction and it went to Mr. Duke?

A. Yes, sir.

Q. Did you deliver the check to Mr. Duke? Did you mail it to him?

A. He was in. I delivered it to him in person.

Q. You delivered it to him in person. You did discuss the prior check with Mr. Duke? A. Did I discuss the prior check with Mr. Duke?

Q. Yes, the one you endorsed? A. I don't believe we did.

Q. Do you know whether you did or not? A. I do not know.

Q. You have no recollection along that line? A. No, I do not.

Q. I show you a check made out to Kenneth Duke for \$500 on 7/21/1960, marked for identification. A. Yes, sir. For what it says on here.

Q. Can you identify the check, sir? A. Yes, sir.

Q. Is that your signature? A. Yes, it is.

MR. SHARP: I would like to have that marked for identification and introduced as the Commission's next exhibit.

HEARING EXAMINER: Exhibit No. 32.

(Division Exhibit No. 32 was marked for identification.)

HEARING EXAMINER: Do you have an objection to its receipt?

THE WITNESS: No.

HEARING EXAMINER: There being no objection, it is received in evidence.

(Division Exhibit No. 32 for identification was received in evidence.)

Q. (By Mr. Sharp) Now, Mr. Batten, would you explain what that check is for? A. Proceeds for his stock in --

Q. Is this another transaction, separate and distinct from this prior one? A. Yes.

Q. Would you explain that? A. He had purchased some stock in the brokerage firm of Mutual Funds of America, Inc.

Q. Do you recall how many shares? A. 1,000, I believe.

Q. And he decided to re-sell them through you? A. Yes, that is right.

Q. You gave him \$500 for 1,000 shares? A. Yes, that is right.

Q. Do you have any recollection at all, stating to Mr. Duke, that would he accept partial payment from Mutual Funds of America, Inc., and the rest of the payment from Batten Company? That is, two different checks? Do you recall anything along that line? A. Partial payment for what?

Q. Partial payment from the two different companies resulting in two checks being drawn for payment of Mutual Funds of America stock which Mr. Duke possessed, and got through you?

Do you recall that? A. Could I have that question read back?

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(The pending question was read by the reporter.)

THE WITNESS: I don't quite understand that.

Will you rephrase it?

MR. SHARP: Let me explain it again to you.

THE WITNESS: Yes.

BY MR. SHARP:

Q. Did Mr. Duke approach you to sell these shares in Mutual Funds? A. Yes.

Q. Did you agree to sell them for him? A. Well, they were not sold. I bought them myself, personally.

Q. You bought them yourself? A. Yes, sir.

Q. That is a sale? A. Yes.

Q. These were 1,000 shares, I believe, in number? A. Yes, sir.

Q. Now, you are telling me that this check, Exhibit No. 32, for \$500 was a sum total paid for those 1,000 shares. That is what you testified to. A. That is right.

Q. What I am asking you, Mr. Batten, is whether or not, in fact, you and Mr. Duke -- you requested Mr. Duke to accept partial payment for Mutual Funds of America?

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That is, a check drawn on Mutual Funds of America and partial payment from Batten and Company. A. I told him?

Q. I am asking you if you recollect speaking to Mr. Duke about that, and it was agreed upon between you two? A. Partial payment for the proceeds of the sale?

Q. Partial payment received from both companies for the sale to you, apparently, of the Mutual Funds of America, Inc., stock.

A. Do I have to answer that yes or no or can I give you an explanation?

Q. Why don't you answer yes or no and give an explanation?

HEARING EXAMINER: As briefly and to the point as you can.

THE WITNESS: I don't believe I can answer it yes or no, sir.

HEARING EXAMINER: I say, as briefly and to the point as you can.

THE WITNESS: I told Mr. Duke I would give him \$500; that he had a \$750 credit in Batten and Company for the proceeds of the sale of stock over there. He had a profit over there. I would give him that \$750 and give him this \$500 here, and we would call the whole thing even.

Q. That is the best of your recollection? A. Yes, sir.

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Q. Then how do you explain the \$750 check again? A. Profit on Saber Boat sale.

Q. Yes, but you told him -- you said to Mr. Duke, "I will give you this profit on Saber Boats?" A. That is right. I did not want any part of it.

Q. Plus \$500. This will cancel out -- A. Right.

Q. Any obligation I owe you for the Mutual Funds of America, Inc., stock? A. Right.

Q. Then you did receive something for the profit of Saber Boat stock? A. No, sir. I would not consider so. The stock was worthless now that I bought the \$500.00.

Q. I mean at that time, sir. A. No, sir. I would not say so.

Q. Did Mr. Duke agree to sell it to you for \$500? A. He did not sell it to me for anything. I agreed to give him that for it.

Q. To pinpoint it a little more clearly, Mr. Batten, there is no relationship between the \$750 check that you gave Mr. Duke and the

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\$500 check you gave Mr. Duke for Mutual Funds of America, Inc.?

- 39 The Mutual Funds of America check was, as you say, for the Mutual Funds of America, Inc., stock he sold to you but otherwise, there is no relationship between those two checks: This \$750 check was an independent entity by itself? A. It is an independent entity by itself. I told him this profit had been made as a result of me putting the money in for him, in his account; I would give him the proceeds of his account and give him this \$500 check and we would call it even.

Q. In other words, you gave him \$750 plus \$500 for the stock?

A. No, sir. No, sir. \$500 for the stock.

- 40 17. Duke was at various times a vice-president, secretary, director and a salesman for Mutual Funds of America, Inc., a company controlled by Batten. Duke had purchased 1,000 shares of Mutual stock for \$1,000. Early in March, 1960, Duke informed Batten that he desired to dispose of these shares. Batten told him that the stock was worth \$1,250 and Duke agreed to accept this amount. On July 21, 1960, Batten made payment to Duke by issuing two checks, one drawn on Mutual for \$500 and the other drawn on the registrant for \$750. Batten at that time asked Duke if it made any difference from what source he received the money and Duke said that it did not. Kenneth Duke testified as to this transaction as follows:

- 41 Q. (By Mr. Brown) I show you a cancelled check which is Commission's Exhibit No. 32 and, also a check which is drawn on Mutual Funds of America, Inc.,; and also Check No. 1568, of the Batten and Company, which has been marked Commission's Exhibit No. 19, and ask you -- A. These two checks? May I remove that or would you rather not have it removed?

Q. No. It is stapled. Refer to it by exhibit number, please.

A. Exhibit No. 32. This check, Exhibit No. 32, was paid to me by Mr. Batten on July 21, 1960; made payable to me. That is Mr. Batten's signature as I knew it and it states here, "For stock in Mutual Funds of America, Inc."

Q. It is in the amount of \$500? A. Right, sir.

Q. Does it bear your endorsement on the back? A. Yes, sir. 42

And if you will also notice, it was deposited in -- well, you may be able to find it -- the First National Bank of St. Mary's.

Q. All right. That is the \$500 check? A. Yes, sir.

Q. Was there any other check given to you by Mr. Batten in connection with your sale to him of the Mutual Fund stock? A. Yes, sir.

Q. Will you state what it is? A. I am going to -- yes, sir. At the same date that I mentioned, that would be July 21, 1960, Mr. Batten also gave me a check, Exhibit No. 19-C.

Q. Yes, sir. A. For \$750.00 made payable to Kenneth B. Duke, and that is my signature also, sir.

Q. Yes, sir. A. This was - as I and Mr. Batten stated at that time -- "Does it make any difference to you where you get the money from?" I said, "No, Frank. Just so I get the \$1,250.00." My understanding was that possibly the account of Mutual Funds of America did not have \$1,250 in it. I did not know, but one check was for \$500; one was for \$750 and there was my \$1,250.00.

I identified those checks, those two checks, yes, sir; and this was 43 also deposited in the First National Bank in Leonardtown.

Q. Just to summarize, Commission's Exhibit No. 32, and Exhibit 19-C, together, represented funds -- the \$1,250 which Mr. Batten gave you for the thousand shares of Mutual Funds of America stock?

A. Right. I took the stock in, signed it, and delivered it to him.

18. Duke and Batten agreed that Duke never ordered or paid for 44 the shares of Saber Boats stock. Batten stated that he endorsed the check for \$2,750 in Duke's name and deposited it to the account of registrant even though he had no power of attorney or authority to endorse the check from Duke. Duke testified in this regard:

Q. Did you ever own any stock of Saber Boat? A. I never ordered or authorized the purchase of any Saber Boat stock but some-time around the first part of May, I would not know the date, it was

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just before I went to the hospital or just after I came out, and I stayed in the hospital about a week, I received --

Q. May of what year, sir? A. May of 1960; early in the month of May. I feel certain that it must have been the first week of May. I was not feeling at all well as I said. I eventually went to the hospital. I received an envelope from Mr. Batten, with the Batten and Company on the envelope, and in it, were a thousand shares of Batten and Company stock.

Q. Batten and Company stock? A. No. No. Saber Boat Company stock. When I first opened the letter, I thought it was something to --
45 either some prospectus of some type, or maybe my check for \$1,250. I did not know. When I saw the stock, I looked through it. I counted the shares that were in blocks of 100, I believe. There were ten blocks, to a total of \$2,000 which just -- I did not know what to think, and I took it home, and I thought I would call Mr. Batten or write him or come on up here. I did not know what was what, in other words, but within either that day or the next day, I received a telephone call from a person -- a lady -- or woman's voice, anyhow, who identified herself as Mr. Batten's secretary -- and said that a mistake had been made and to send this stock back. I mailed it back that day; put it in an envelope and sent it back. I did not send it by registered letter. It did not come to me by registered letter and I did not send it by registered letter but I sent it back immediately, that day, and I did not sign any of
[six words illegible] and there were, to the best of my knowledge, the value of that stock was \$2,000.00

Q. Did you ever order any Saber Boat stock? A. No, sir.

Q. And did you ever sell any -- purchase, I should have said -- did you ever purchase any Saber Boat stock? A. No, sir.

46 Q. From Batten and Company or Mr. Batten? A. No, sir.

Q. Did you ever sell any? A. No, sir. I never sold any of the Batten and Company stock.

Q. I am talking about Saber Boat stock. A. Yes. I mean, I never sold any stock in that company.

Q. Saber Boat? A. No, sir.

Q. Did you ever discuss the receipt of the 2,000 shares by you with Mr. Frank Batten? A. The last time I saw Mr. Batten was that meeting, which was in March. The next time I saw Mr. Batten was in July, the day he paid me the \$1,250.00 and at that time, Mr. Batten did refer to the Saber Boat stock. Did I remember the deal, which yes, I remembered it. He had sent the stock to me and I had sent it back but that seemed to be all the conversation that there was to it. I waited around the office for quite a while and asked Mr. Batten to go to lunch with me, which he accepted. We went to lunch together, and Mr. Batten was very busy that day and left before I had finished my lunch. I went back to the office, waiting around to see Mr. Batten for any further discussion, but he was very busy. I eventually left, and I did not see him any more and to the best of my knowledge and belief, today is the first time that I have seen Mr. Batten since July 21, 1960. I am pretty 47 certain of that, that I have not seen him since.

Q. Did you ever receive a check from Batten and Company in connection with a transaction in Saber Boats stock? A. No, sir.

Q. I show you Commission's Exhibit No. 19-B -- Division's Exhibit 19-B -- which is a check No. 1200 made payable to Kenneth B. Duke in the amount of \$2,750.00 and ask you if that check bears the endorsement of Kenneth B. Duke in your handwriting? A. I never saw this check, sir, until that day I was in your office, somewhere around October 1, and this is not in my handwriting. It is not my signature; it was not deposited in the bank where I normally would make my deposits, that I might have. I used the First National Bank only.

Q. Did you ever authorize Mr. Batten or anyone from Batten and Company to make a check out in your name and endorse your signature on the back of that check? A. No, sir.

Q. Does that check, Division's Exhibit No. 19-B, bear the signature of Franklin L. Batten? A. I am not a handwriting expert, sir, but it would seem to me that would be exactly the same signature, and as I have seen Frank Batten's signature for several years. Now, 48

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I would say yes, that is definitely the signature, the same signature that appeared on these other checks. Yes, sir.

Q. Did you ever receive a confirmation of the purchase and sale of a thousand shares of Saber Boat stock from Batten and Company?

A. Yes, sir; sometime, I would say, around, it must have been in the last of September or the first of October, sometime along in there, sir.

Q. Of what year? A. Of 1960.

Q. I show you Commission's Exhibit 19-H and 19-I, and ask you if those are the confirmations which you received at that time? A. Yes, sir. I would say they are. Yes, sir.

Q. As a matter of fact, they bear your signature up in the upper left hand corner and the date of October 6, 1960. Is that correct?

A. That is correct, sir.

Q. Indicating that you turned those over to the Securities and Exchange Commission? A. Yes, sir.

Q. I note that Commission's Exhibit No. 19-H is dated May 2, 1960 and Commission's Exhibit No. 19-I is dated May 20, 1960. Is that
49 not correct? A. That is correct, according to these dates here, yes, sir.

Q. And still, you did not receive them in May 1960, did you?

A. No, sir.

Q. Are you quite certain of that? A. Oh, yes. Yes. I have taken an oath on that.

However, I might say that they are different dates, as we see. This was the purchase, I guess, and that is the sale. I see the difference. All right, sir.

Q. Yes. But these two were received together, were they not, 19-H and 19-I? A. I would say the last of September or the first of October 1960.

Q. Do these two documents, 19-H and 19-I reflect transactions which you had with Batten and Company? A. I cannot see how they possibly could, sir, in any way.

Q. And your answer then is -- A. Is not, to the best of my knowledge and belief. However, at the time that Mr. Batten -- when he gave that \$750.00 check in there, it just does not tie in with the date now. It may seem on the face of it, that the \$750 check might be the difference between the purchase price of the stock, of \$2,000 and the sale of the stock for \$2,750.00. However, I have stated already that that 50 check was paid to me for my stock in Mutual Funds of America, Inc.

Q. That is the \$750 check you are referring to? That is Exhibit 19-C, is that correct? A. Yes, sir.

Q. Yes? A. Yes, sir. That had nothing whatsoever to do with any of Batten and Company, except that it was paid out of Batten and Company account and it should have come out of Mutual Funds of America. That would be my opinion, sir.

Q. Yes, sir. I again refer you to Exhibit 19-H and 19-I. Will you state in what manner you received those two exhibits? A. By mail.

Q. And where did you receive them by mail? A. At Leonardtown, Maryland.

Q. And that date was on or about -- A. The last of September or the first of October, just about the time all this investigation started.

Q. In 1960? A. Yes, sir.

51 19. Stock certificates were mailed to Duke, according to Batten in error, and Duke returned them when requested by the registrant's office. Batten stated that the certificates should not have been placed in the name of Duke, but rather in a street name, since Duke did not pay for them. Duke received confirmations in the mail concerning the above transactions some time in late September or early October 1960, four months after the alleged transactions.

The evidence of the James D. and Audrey Hansford transaction was as follows:

52 20. The books and records of the registrant, including the customer ledger account card, order and execution form, and the cash receipts and disbursement journals indicate that on May 2, 1960, James D. and Audrey Hansford purchased 1,000 shares of Saber Boats stock at \$2 a share for a total of \$2,000 and payment was received by the registrant on May 4, 1960. On May 4, 1960, according to its records, this transaction was reversed and registrant repurchased these shares, as principal for its trading account. Payment is shown at \$2 a share for a total of \$2,000 by a check drawn to the order of James D. Hansford on May 9, 1960. Batten testified that James D. Hansford, a member of the Armed Forces stationed in Europe, did not order the shares of Saber Boats stock in question, but that he confirmed the sale, hoping that Hansford would pay for them. Hansford was a friend of Batten's and had been a salesman for the registrant. The basis for Batten's hope that Hansford would take the stock was a conversation which they had in March 1960, in which Hansford told Batten that he would like some Saber Boats stock. On May 4, 1960, two days after the alleged purchase, Batten purportedly caused the 1,000 shares to be repurchased "from Hansford's account and placed in the registrant's trading account." To complete the alleged repurchase, Batten had a check issued in Hansford's name dated May 9, 1960, in the amount of \$2,000 in payment of stock and caused Hansford's name to be endorsed on the check and then deposited the check to the account of the registrant.

Batten testified as follows concerning this transaction:

HEARING EXAMINER: All right, now. Was payment made when the stock was issued to Hansford of that transaction? Did you make any payment on Hansford's behalf on Batten and Company?

THE WITNESS: Yes, I did.

HEARING EXAMINER: From what funds?

THE WITNESS: From my funds.

HEARING EXAMINER: Personal funds?

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THE WITNESS: Personal funds.

HEARING EXAMINER: Then he did not in effect pay you back the money, I would guess. Is that the way you look at the transaction?

THE WITNESS: Right. Right.

HEARING EXAMINER: Then you had Batten and Company issue --

THE WITNESS: Issue a check.

HEARING EXAMINER: Batten and Company buy the stock for its trading account, is that right?

THE WITNESS: Yes, sir.

HEARING EXAMINER: And issue the check for \$2,000 to Hansford?

THE WITNESS: Right.

HEARING EXAMINER: And someone endorsed that check, so you, personally, could make use of that check, is that it?

THE WITNESS: That is right.

HEARING EXAMINER: All right.

BY MR. SHARP:

Q. And this stock was bought back at what price sir? A. \$2.00.

A. Yes.

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Q. And the stock was sold. What was the date it was sold, sir? June 2? A. May 2, it says.

Q. May 2? A. Yes.

Q. And you sent the confirmation to Germany, and on May 9, you repurchased it because he failed to pay for it? A. I think it should have been the same as the other. I thought it was 4/28, the same as the other. Apparently, it did not get written up until 5/2.

Q. Let's check the order form. A. The order form says 5/2.

Q. Commission's Exhibit 8-E is in your handwriting and is signed by you. Is that correct, sir? A. Yes, sir. That is right.

Q. According to your own books and records, you sold this on 5/2 and sent a confirmation -- was it in Germany? A. I am not sure whether it was France or Germany.

Q. France or Germany? A. Yes.

55 Q. Within five days, you resold the stock back to yourself, back to Batten and Company's trading account, allegedly because the customer had not paid for it. Is that correct? A. Right.

MR. SHARP: Mr. Examiner, at this time, I would like to have marked for identification an affidavit jointly executed by Audrey M. Hansford and James D. Hansford, and it was executed in Germany, relating to this transaction, as Division's Exhibit No. 33 for identification.

(Division's Exhibit No. 33 was
marked for identification.)

MR. SHARP: Also at this time, I would like to submit it in evidence. I would like to first show it to Mr. Batten.

HEARING EXAMINER: See if you have any objection to it.

MR. BATTEN: I have no objection.

HEARING EXAMINER: No objection?

MR. BATTEN: No, sir.

HEARING EXAMINER: All right. It is received in evidence.

56 21. In the joint affidavit by the Hansfords, they stated that neither of them had purchased any Saber Boats stock from the registrant and had not received the \$2,000 check, dated May 9, 1960, nor did Franklin Batten have power of attorney to endorse checks for either of them.

The evidence of the Clyde B. and Bonnie M. Shorter transaction was as follows:

22. The books and records of the registrant, including the customer ledger account cards, order and execution form, and the cash receipts and disbursement journals, indicate that on April 28, 1960, Clyde B. and Bonnie M. Shorter purchased 1,000 shares of Saber Boats

stock at \$2 a share for a total of \$2,000 and payment was received on May 4, 1960 by the registrant. It is also shown that on May 4, 1960, the transaction was reversed and registrant repurchased these shares as principal at \$2 for its trading account. Payment for the repurchase is shown at \$2 a share for a total of \$2,000, by a check dated May 4, 1960 to the order of Mr. Shorter.

23. Some time in April 1960, Batten approached Mr. Shorter, a personal friend, and recommended that she invest in Saber Boats. Batten and Mrs. Shorter agreed that when she said she did not have the necessary money, Batten said he would lend it to her but they did not reach any firm arrangement. After the shares were confirmed, she realized that things had gone far beyond where she intended and told Batten she did not want the stock. The stock, on May 9, 1960, was repurchased by the registrant and placed in its trading account. The check issued by the registrant in purported payment of said stock was caused by Batten to be endorsed and deposited to its account.

The evidence of the James F. and Marsha Renfrow transaction was as follows:

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24. The books and records of the registrant, including the customer ledger card, order and execution form and the cash receipts and disbursement journals, indicate that on April 28, 1960 James F. and Marsha Renfrow purchased 1,000 shares of Saber Boats stock at \$2 a share for a total of \$2,000 and payment was received by the registrant on May 5, 1960.

25. The Renfrows had no dealings with Batten & Co., never purchased any Saber Boats stock from Batten & Co., and had no knowledge of the purchase of Saber Boats stock in their names until some time in October 1960, at which time they received, in the mails, a confirmation of the purchase in April 1960. Batten, in October 1960, informed them that this was a gift to them. Batten testified that Renfrow was a personal friend, that he effected the transaction in

Saber Boats stock in their name, and intended it as a gift. Batten maintained that this stock was retained by the registrant in street name and never resold. The stock was never delivered to the Renfrows, but Batten maintained that it was listed on the records of the registrant as owing to the Renfrows. Batten was not certain how he paid for this stock.

The evidence of the Willie and Estelle Martin transaction was as follows:

26. The books and records of the registrant indicate that on April 29, 1960 Willie and Estelle Martin purchased 1,000 shares of Saber Boats stock at \$2 a share for a total of \$2,000 and payment was received on May 5, 1960.

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27. According to Batten, he made the actual purchase of these shares, intending them as a gift to the Martins, Mrs. Martin being his sister. He further testified that he paid for the stock in cash but that according to office practice, he did not turn over the actual cash on May 5th, the date of the alleged payment, but retained possession of the cash. He further stated that a confirmation was sent to the Martins but the stock was never actually delivered.

The evidence of the Rose McCreight transaction was as follows:

28. The records of the registrant indicate that on April 29, 1960 Rose McCreight purchased 500 shares of Saber Boats stock at \$2 a share for a total of \$1,000. Payment was recorded as received on May 5, 1960.

29. Batten testified that this was a similar transaction to that of the Martins. Rose McCreight is Batten's mother-in-law. She did not order the stock involved here but Batten purchased the shares, again in cash, intending it as a gift. Batten, according to his testimony, told Mrs. McCreight of the gift and sent her a confirmation. No stock was ever issued to Mrs. McCreight, although Batten testified there is stock in the possession of the registrant in street name form in amounts sufficient to cover claims for stock owing Mrs. McCreight and others.

The evidence of the Derwood and Peggy Jones transaction was as follows:

30. The records of the registrant indicate that on April 29, 1960 Derwood and Peggy Jones purchased 1,000 shares of Saber Boats stock at \$2 a share for a total of \$2,000 and payment was received by the registrant on May 5, 1960.

31. Mrs. Jones is Batten's sister. According to Batten, this, as in the case of the Renfrow, McCreight and Martin transactions, was a gift by him. These shares were not ordered by Mr. and Mrs. Jones and 59 the stock was not placed in their names, but according to Batten, street name stock to cover this purchase was retained in the treasury of the registrant. A confirmation of this transaction was sent to Derwood and Peggy Jones.

The evidence of the Alfred W. and Frances Reiter transaction was as follows:

32. The records of the registrant indicate that on April 29, 1960 Alfred W. and Frances Reiter purchased 1,000 shares of Saber Boats stock at \$2 a share for a total of \$2,000 and payment was received on May 4, 1960 by the registrant. They also show that the transaction was reversed on May 4, 1960 and the registrants repurchased that stock as principal for its trading account. Payment for repurchase was shown at \$2 a share for a total of \$2,000, by check drawn to the order of Alfred Reiter on May 9, 1960.

33. Reiter, a salesman employed by the registrant, testified as follows:

Q. The account indicates on 4/29-60 you purchased 1,000 shares of Saber Boats at \$2.00 a share. Is that correct, sir? A. That is correct.

Q. How was payment made for this? A. Payment was not made for it.

Q. It was not made for it? A. It was not made for it.

Q. How was the transaction handled? A. I placed an order to purchase the shares. I did purchase the shares, but the intent was that 60

if it did not show signs of being popular with the public and increasing in price, that I no longer wanted to run the risk and would sell it very shortly and soon after I purchased it, within several days, I did sell it and told Mr. Batten at the time, that I told him to sell it, that I would prefer if it was not. I would prefer not to have to liquidate other securities that I had intended to pay for it with, because these other securities were in the marginal accounts, and I would have lost purchasing power. So I asked Mr. Batten if he could lay out the money -- that is, lend me the money. He agreed to do so.

Q. And did he do that, sir? A. Yes, he said that he would. He did not give me any money. He said that he would take care of it.

Q. So he actually did not give you physical possession of any monies? A. No, sir.

Q. And he said he would take care of it on a loan basis? This is when you first purchased the stock? A. Not when I first purchased it. It was not discussed when I first purchased it. When I first purchased it, I bought it in good faith with the intent of paying for it. At the time I bought it, I had no idea how long I would hold it.

61 If the price rose, I would have held it for some indefinite period of time and certainly would have sold my other securities and paid for it.

Q. I see; and then is it not true on 5/4/1960, you sold 1,000 shares of Saber at the price of \$2.00? A. That is correct.

Q. Back to Batten and Company? A. That is correct.

Q. That was a period of, I believe, April 29 was a Friday -- May 4 was on a Wednesday -- it is a period of six days, excluding the weekend, of four days -- you gave the market four days to move and it did not move so you wanted to dispose of the stock. Is that correct, sir? A. I did not give the market any particular time. It just reached the point where I decided that it did not look like it was going to take off, so to speak, and rather than run the risk any further, I decided to sell it.

Q. And how was this loan going to be repaid to Mr. Batten? This \$2,000? A. It was not going to be repaid because it meant that the stock was sold and since I no longer had an interest in the stock there was no necessity for repaying it.

Q. So no monies passed hands whatsoever? A. That is correct.

Batten had a check issued in Reiter's name in the sum of \$2,000 to complete the repurchase of these shares, caused Reiter's name to be endorsed on the check, and it was deposited to the registrant's account. Reiter did not see this check until some time in October 1960, and he did not authorize anyone to endorse the check for him. 62

34. Batten agreed in substance with Reiter's version, as set forth above. He further testified that he made payment by telling his bookkeeper-cashier that he had the money in his pocket.

The evidence of the Louise McArdle transaction was as follows:

35. Louise McArdle was employed as a bookkeeper-cashier by the registrant from April 1959 to August 1960. On April 29, 1960, 375 shares of Saber Boats stock were placed in her account and on May 2, 1960 an additional 105 shares were added to it. In both instances, the price listed as paid for the stock was \$2 a share. She admitted she did not pay for the shares but that Batten had given the shares to her. On May 20, 1960 she sold 105 of these shares at \$2.75 a share. She stated that on occasion, Batten had given her instructions to make entries on the books and these entries would be made without supporting information. If he told her he had received payment on a particular transaction, she would mark the account as paid. She did not make out or endorse any of the checks payable to Sines, Hansford, Pierce, Reiter or Shorter. On cross-examination by Batten, Miss McArdle testified:

Q. Mrs. McArdle, the books of Batten and Company show that 3,875 shares were cancelled, is that correct? A. Yes. 63

[J.S. 65]

Q. And that I delivered 1,000 shares, is that correct? A. It doesn't say you delivered them.

Q. What does it show? A. This shows 3,875 shares cancellation. It does not indicate where the cancellation came from. This is the position record and not the blotter. The blotter indicated that it was Frank L. Batten in the trading account, but this doesn't say anything about that.

Q. Mrs. McArdle, you have known me to have large amounts of cash, haven't you? A. Yes, sir.

Q. And you would not enter anything on our books unless there was some receipt? A. That is right.

Q. Or unless I told you or some salesman told you that they had it? A. That is right.

64 Q. Have I ever told you to do anything that you believed was not in accordance with good bookkeeping principles? A. No.

Q. Mrs. McArdle, as a bookkeeper, do you see anything wrong with depositing checks to a customer's account in lieu of cash? A. No.

Q. As long as it was credited to the customer's account? A. No.

65 The evidence of the Esther D. Earnhardt transaction was as follows:

36. Mrs. Esther D. Earnhardt, in May 1960, saw an advertisement in a local newspaper which invited inquiries from the registrant concerning Saber Boats stock. She responded to this ad by mailing to the registrant a request for information. In early June she received a telephone call from Sidney Shore, a sales representative for the registrant. As a result of this conversation, she purchased 25 shares of Saber Boats stock at \$5.50 a share for a total of \$137.50. She received a confirmation of the transaction and made payment by check.

37. On or about June 22, 1960 she telephoned the offices of the registrant and talked to Shore, who told her that Saber Boats would go up to 10 or \$12 a share by the end of the year and that she could not lose any money since it was such a good thing. She purchased an additional 50 shares at this time at a price of \$5 a share for a total of \$250.

38. At the time of each of her purchases, she was told that the price quoted her was the market price of the stock. She was not told how the market price was established nor was she informed of the registrant's bidding in the pink sheets, nor its activities in buying in the dealer market or its influence on the price of her shares. On cross-examination by Batten, Mrs. Earnhardt testified as follows:

Q. Do you have accounts with other brokers? Have you bought 66
stocks from brokers besides Batten & Company? A. Yes, I have.

Q. Then, you would say you are familiar with stocks? A. Not
too familiar. I don't know the loopholes.

Q. You would say you had, at least, a layman's knowledge of
stocks? A. Yes.

Q. When you purchased this stock on June 3, did you use every 67
available resource that you had to determine from other brokerage
firms that you had been dealing with as to the price of Saber stock?
A. No, I didn't discuss it with anyone.

I was so impressed with the literature and so impressed with Mr.
Shore's details about it and what a good thing it was that I didn't ques-
tion it. I didn't discuss it with anyone but my husband.

Q. Mrs. Earnhardt, you say you have been dealing with stocks for
some time. You have some stocks -- you are quite familiar with the
financial page. Now, is it not quite extraordinary for someone to guaran-
tee you that a stock will double? A. No, not the way Brunswick and Avco
and all those stocks have gone up. Of course they are on the New York
Stock Exchange, which is different.

Q. You wouldn't expect someone to guarantee that, would you, when
you buy stock? A. I went by the literature I got from the firm.

Q. Yes, but would you expect someone to guarantee that stock
would double? A. Yes, I would if it was as good as Boat stock was
supposed to be, I surely would. You can drive anywhere in Maryland,
Chesapeake Bay and see ads of boats all of the time and new boats. 68

Q. So, that is what prompted you, then, to buy this boat stock?
A. That is right. I figured it was good.

Q. The many boats you saw around and behind trailers?

A. Not behind trailers, no, in the water.

Q. In the water? A. That is right, and the literature was so convincing. And Sam Bergman's letter where he said it is so very good and everything. That was another thing that influenced me in buying more later.

HEARING EXAMINER: Is that letter an exhibit?

THE WITNESS: Yes, sir, it is.

BY MR. BATTEN:

Q. Mrs. Earnhardt, did you know that the stock that was sold to you on June 3 and on June 5 -- I mean on June 22, the 75 shares --

A. Fifty shares.

Q. Fifty and twenty-five -- seventy-five total. A. Yes.

Q. Did you know that Batten & Co. had lost money on those transactions? A. No, sir, I did not. I was never told. If I hadn't called up, I wouldn't know it yet.

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MR. BROWN: Mr. Examiner, this is the third time that Mr. Batten has asked this question or a similar question with respect to whether or not they lost money and the fact that he is making the statement, I don't know what it is going to show, that the Division doesn't agree that this necessarily is so.

MR. BATTEN: I don't necessarily agree to any of those statements you asked her then. I don't agree to any of them and they have inferences in them.

HEARING EXAMINER: This is a very simple matter. I have often said before in hearing and I will say it again, statements of counsel, or in this case he is representing himself, Mr. Batten, are not evidence. It is what the witness says that becomes evidence in this case and that we go on.

Let's go ahead.

MR. BATTEN: That is all.

HEARING EXAMINER: Anything further?

REDIRECT EXAMINATION

BY MR. BROWN:

Q. Mrs. Earnhardt, just a few brief moments ago when you were being cross-examined by Mr. Batten, you stated that one of the things which influenced you in buying a stock was the fact you had seen boats around many of the lakes in the area. Another was the literature you received and which has been identified in evidence. Is it also not true that you were influenced in effecting these purchases by the statements which were made to you by Mr. Shore prior to the time you ultimately made the purchases? A. Yes.

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71 Division Exhibit 44 was identified as received by her and admitted in evidence. Insofar as pertinent it appears as Joint Exhibit # 5. In this regard, another salesman testified (Tr. 980-981):

BY MR. SHARP:

Q. Mr. Byrd, I show you Division's Exhibit 44, which consists of a series of papers, selling literature and I ask you, sir, if you have used the same or similar selling literature. This note here, it is the selling literature is from Sidney Shore. A. This is something he made up himself and mailed out. I made up a little --I sent out about seven letters to some of my out-of-town stockholders that I gave them a little thumbnail sketch of what supposedly developed.

Q. Also, included is another one by Stanley Berman. A. This is the first letter that was mailed out, that is right, and this is the one that we used to point out --

Q. Did you pass this on to your customers? Did you mail it out?
A. Yes. Sure.

Q. And the picture pamphlet of the boat you passed on? A. Yes.

Q. And how about this pamphlet put out by Batten & Co., boat stock and so on? A. That was something we wrote up. In fact, I helped get the dang thing up. I dug up all of this information. This was prior to the offering of the --

72 Q. Would you call this a representative sample of the literature used at the time? A. Yes.

The evidence of the George Tedore transaction was as follows:

39. George Tedore also sent in a request for information on Saber Boats stock after seeing an advertisement by the registrant in a local newspaper. He received sales literature and an offering circular concerning Saber Boats stock. He then telephoned the offices of the registrant and spoke with Lee Byrd, a sales representative, and during this conversation, which was held on June 3, 1960, he purchased 200 shares of Saber Boats at \$5.50 a share. This transaction was confirmed by confirmation and payment was made by check. Byrd

told Tedore that the stock had gone up rapidly, that it should be considered a good stock, and that by the end of the current season it might be \$8 or 9 a share, and that by the end of the following season, it might triple in price for him. Tedore was not told anything about the registrants' bidding in the pink sheets, its activities in buying in the dealer market, or its influencing the price paid for the stock. On cross-examination by Batten, Tedore testified:

* * * * *

Q. Mr. Tedore, have you had experience in purchasing or selling stock prior to this purchase of Saber Boat stock? A. Yes, I have.

Q. So you have accounts with other brokers; is that right?
A. Yes.

Q. A question was asked of you by counsel, what, if anything, were you told about Batten & Co. bidding in the pink sheets. Has any broker ever told you that they were bidding in the pink sheets? A. No.. 73

Q. Have you ever heard of the pink sheets prior to this?
A. Yes, I have heard of them.

Q. Another question they asked you was what, if anything, were you told about Batten & Co. buying in the dealer market. Has any broker you have ever dealt with when you went to buy stock indicated to you that they were buying or selling in the dealer market? A. No.

Q. Another question that was asked was what, if anything, were you told about Batten & Co. influencing the price. Has any broker ever told you that they influenced the price of a stock? A. No.

Q. Mr. Tedore, have you ever complained to the Commission or to myself? A. No, I didn't. About this you are speaking?

Q. Yes, about this Saber Boats. A. No. I tried to get ahold of the salesman, but I wasn't able to find him to speak with him, at the company, that is.

MR. BATTEN: That is all.

74 The evidence of the Marie McMillan transaction was as follows:

40. Marie McMillan purchased 500 shares of Saber Boats on February 25, 1960 at a total price of \$1,000. On May 31, 1960 she purchased 200 additional shares at \$5 a share for a total of \$1,000 after having a discussion with Batten. Batten told her the market price was \$5 a share and that it may be up to \$7 a share by the following week, but did not reveal to her any of the registrant's activities in the pink sheets or in the dealer market, which activities might be influencing the price to be paid for the stock. On cross-examination by Batten, Marie McMillan testified as follows:

75 Q. Mrs. McMillan, have I or any of my representatives ever misrepresented any stock to you, or Saber Boats, respectively, when talking about Saber Boats? A. Misrepresented?

Q. Misrepresented any facts concerning Saber Boats.

HEARING EXAMINER: As far as you know, I guess.

Q. As far as you know. A. Not as far as I know, no.

Q. Have you ever complained to me or any of my salesmen or to the Commission of your dealings with Batten and Company?

A. No. I have not.

Q. As a matter of fact, Mrs. McMillan, did not one of my representatives try to get you to sell your stock in Saber Boats? A. He was working with me.

Q. And take a profit? A. He had left your company and gone into Jones.

76 Q. Right.

HEARING EXAMINER: Jones, Krieger and Company?

THE WITNESS: Jones, Krieger and Company, and he did call me up one day and told me the stock was around \$3.00 and he thought perhaps I should sell it because he said the market was shaky.

Now, what he meant by that, I don't know.

Q. Mrs. McMillan, did you get a card in the mail stating that we would purchase your stock from you -- Saber Boats -- at a profit?

A. No.

Q. We sent several. I don't know whether you got one or not.

A. No.

Q. Mrs. McMillan, you have had accounts with several other brokers, and you now have accounts with several other brokers, isn't that true? A. The only reason I went to Krieger -- Jones and Krieger -- is because Mr. Tayler was the one I was dealing with at your company.

Q. I mean, over the years, you have had several brokerage accounts, over the years? A. Yes. Before I came to Washington -- I have only been in Washington for about a year. I started with your company here in Washington.

The Evidence of the Dr. Peter Malnati transaction was as follows:

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41. Dr. Peter Malnati made a total of four purchases of Saber Boats stock from the registrant and in all transactions he dealt with a Mr. Caughey, a sales representative. On May 11, 1960, he purchased 300 shares at \$2.75 a share; On May 24, 1960, 100 shares at \$4.75 a share; on May 27, 1960, 300 shares at \$4 a share; and on May 31, 1960, 500 shares at \$4.50 a share. He received confirmations for all these transactions and made payment by checks. He testified that he basically bought the stock because it was going up in price, received quotations from Caughey and also saw quotations in weekend newspapers. Before the last one or two transactions, Caughey told him that the price of the stock would probably go to between \$7 and \$10 in short order. He was not told of the registrant's activities in the pink sheets or the dealer market nor that the registrant's activities might be influencing the price he paid for the stock. On cross-examination Dr. Malnati testified as follows:

Q. Dr. Malnati, is this the only stock you have ever purchased, that didn't act the way that you desired it? A. No, you have sold me others that didn't act that way I would like them to.

Q. You are aware, then, there is a risk in buying stocks? A. I assume that, when I purchase any stock, correct.

Q. No guarantee is made to you? A. Not that a stock would behave in any particular manner, no, sir.

Q. That is all.

78 The Evidence of the John W. Wheeler transaction was as follows:

42. During the underwriting period, John W. Wheeler purchased 100 shares of Saber Boats stock at the offering price. On or about May 8, 1960, he received a post card, through the mail, from the registrant which offered to buy or sell Saber Boats stock at \$2.50 a share. On May 31, 1960, he made an additional purchase of 200 shares at \$4 a share. Before his last purchase, Mr. Caughey, a sales representative of the registrant, told him that the stock was expected to rise to \$15 a share within a year. He was not told of the registrant's activities in bidding in the pink sheets nor was he told what influence the registrant's trading activities might have on the price he paid for his stock. On cross-examination Mr. Wheeler testified as follows:

79 Q. You said you had an account with other brokers. You were aware you can buy and sell stock from anybody you chose. Nobody has barred you from buying and selling stock from any brokerage firm, have they? A. No.

Q. So you could have, in turn, bought it from some other brokerage firm, too, in the market? A. Oh, yes.

Q. A question was asked by the counsel for the Commission as to whether you were informed that Batten & Co. was bidding in the pink sheets. Do you even know what the pink sheets are? A. I have a vague idea.

Q. Has any broker ever told you that they were bidding in the pink sheets or anything to do with the pink sheets? Have they mentioned pink sheets to you? A. No, I don't believe so. No.

80 The evidence of the Rex Hammond transaction was as follows:

43. Rex Hammond made a total of three purchases of Saber Boats stock from the registrant through one of its sales representatives, Edward A. Berody. He first purchased 200 shares at \$2 a share on February 25, 1960 during the underwriting period. He purchased an additional 100 shares at \$4 a share on May 27, 1960 and made a third purchase of 100 shares at \$5.50 a share on June 2, 1960. He was not

told about the registrant's bidding in the pink sheets and the dealer market. On cross-examination by Batten, Mr. Hammond testified as follows:

Q. What did Mr. Baroody tell you that the price of this Saber Boat stock would go to? A. Well, he didn't state any price of what it would go to, but he said it was going to go pretty high. 81

Q. He didn't mention any number? A. Well, I wouldn't say that he did -- I know he talked a lot of times something around \$15.00, but how the conversation arose, whether it was a suggestion or however, I wouldn't say that anybody could say that any stock would go to a certain point. Nobody could say that, and even if he did, I wouldn't believe it, but there had been a mention of around \$15.00.

Q. Did you receive confirmations of the purchases in May and June? A. Yes, I received confirmations of where they had received my money.

Q. How did you receive these? A. By mail.

Q. Mr. Hammond, would you state what representations, if any, were made to you about the price you paid for Saber Boat stock being the market value of that stock? A. Well, that was the price it was selling at, and I was advised I better get in because it was going by leaps and bounds. 82

Q. Well, then, Mr. Hammond, you have had brokerage accounts with other firms other than Batten & Co.? A. Oh, yes. 83

Q. Would you state approximately how many? A. Bache and Orvis Brothers and Merrill, Pierce, Fenner and Smith.

Q. Now, has any broker ever told you when you were about to purchase a stock that they were bidding in the pink sheets for it? You stated earlier you never heard of the pink sheets. A. I never heard of a pink sheet until about a couple weeks ago. I never saw one, and that is definite.

Q. Has any broker ever stated to you, any registered representative of a brokerage firm, that his particular firm was influencing the market

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in stock? A. No, because I don't think any broker can influence the market.

84 Q. It would be ridiculous for him to even mention it, wouldn't it -- probably? A. I mean to control the market.

Q. Mr. Hammond, inasmuch as you knew that there were other brokerage firms existing in Washington, you didn't feel obligated to buy your stock from Batten & Co., did you? You could have gone other places and bought your stock, couldn't you? A. Yes, but it is like this: If you go out here on the street and want some bananas and you see a fellow selling bananas, if you want bananas you don't pass him and go down and hunt for someone else. In this case I knew of no one selling the stock.

85 Q. Mr. Hammond, have you lost money on securities prior to dealing with Batten & Co.? Have you ever lost money? A. Yes. There is no man living, I don't think, can say he hasn't lost money. You lose, as well as you win.

Q. And you were aware of the risk in buying stocks, weren't you, that they go both ways -- up and down? You were aware of that? A. Why sure.

Q. No guarantees were made to you by Mr. Barody, were there? I believe you stated earlier you would be suspicious of it or something like that. He didn't say, "I guarantee you to double your money" or anything to that effect, did he? A. No, but he recommended very highly that it is "a-going" and the fact that it is a-going, I just feel just like it is a streetcar coming and since it is a-going in your direction and it is a-coming, if you want to get to work you better get on it.

Q. This is not the first time a stock has ever been recommended to you, is it? A. In fact, I have never bought very many stocks.

86 Q. But you have had many recommended to you over the years? A. Oh, yes.

The Evidence of the William Keener transaction was as follows:

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44. William Keener was employed by the registrant from May through December 1960 as a bookkeeping-cashier. He had purchased 100 shares of Saber Boats stock through another broker and sold it to the registrant on May 31, 1960 at \$4.25 a share. On June 2, 1960 he purchased another 100 shares of the stock at \$4.25 a share and sold it on June 16, 1960 at \$5 a share. He borrowed the money from Batten to make this purchase. Keener testified that he did not endorse the various Batten & Co. checks payable to Shorter, Sines, Hansford, Reiter and Pierce referred to in this record.

B. Activities of Sales Representatives

45. Three sales representatives employed by the registrant during the period May 3, 1960 through June 30, 1960 testified. During this period registrant employed five or six salesmen. It held numerous sales meetings at which optimistic forecasts for Saber stock were discussed and prior to May 3, 1960, it ran a sales contest in Saber stock. Salesmen were never told by the registrant to tell their customers of its activities in the dealer market nor did they give any information as to those activities to their customers except in response to a specific question. Lee Byrd, who was employed as a sales representative by the registrant, testified that he told his customers that the market price was the prevailing market price and that he did not tell his customers that the registrant was buying in a dealer market at successively higher prices. He did not furnish his customers with information on the registrant's activities in the dealer market, except when the point was specifically raised. Also, he never told his customers that the registrant's activities might have some influence on the price they were paying for their stock. He never received instructions to relay this information to customers. Two other sales representatives, Edward A. Baroody and Lawrence Stafford, gave similar testimony. On direct examination, Lee Byrd testified:

Q. Mr. Byrd, did Mr. Batten indicate or state directly at any time 88

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where he thought Saber Boats stock would go, how high it would go, what price? A. Oh, we were constantly discussing this and that and the other pertaining to how high it could go in the event that they were able to show this earnings and that earnings and he is as guilty as we are as guilty as he is there of talking about it possibly going to ten, twelve, fifteen dollars a share or higher. I even had it going up higher.

Q. These weren't joint conferences, then, sitting around the table? A. Well, that would be in general conversation; that is right.

Q. And this would not directly come from Mr. Batten; this would be the result of a general talk, taking into consideration all of the factors, dividends and what have you -- earnings, rather, not dividends?

89 A. Well, we would participate in the conversation and we were each expressing our own expectations. Most of us owned a few shares of it and we were all -- what the heck, we were all hoping, you know.

Q. Then did you pass this on to customers, what you thought it might go up to? A. In as many words, yes. Not as much in price as I --

Q. What price did you mention? A. Well, I don't mention prices.

Q. Did you say "double"? A. That is right; it is possible if the stock is able to show fifty cents earnings in the first six months and only show twenty-five or thirty cents in the last half, which is the bad part of the year for them, and they are still able to come up with a seventy-five or eighty cents per share earned for the year, why the stock should sell up to such and such a price.

90 On cross-examination by Batten, Lee Byrd testified:

Q. Has anyone ever given you instructions at a brokerage house, Mr. Byrd, to inform your clients that we are bidding in the dealer market and inform each and every client? A. No, no.

Q. And has anyone ever given you instructions at any brokerage house or have you ever heard of anyone getting instructions at any brokerage house when working as a salesman that their firm is influencing the price of this stock and instructions for you to tell every client

that? Have you ever heard of that? A. Well, I have heard of situations where the stock was in short supply and a certain broker had orders to fill and he was bidding the stock up to acquire it to fulfill his orders, yes.

Q. The question is have you ever heard of anyone ever getting instructions, any salesman getting instructions, to tell their clients that their firm is bidding, is influencing, rather in this case influencing the price of this stock? Have you ever heard any instructions like that ever being given? A. Well, I hesitate to answer that because I don't know. I don't know.

On cross-examination by Batten, Edward Baroody testified as follows:

Q. Mr. Baroody, the question was proposed here to some other 31 witnesses as to whether what, if anything, was instructed for you to tell your clients about Batten and Company bidding in the pink sheets.

A. We never were instructed, as far as I can recall, to go in and tell a customer that we are bidding for a stock which -- in the brokerage business -- it is very unethical as far as the customer is concerned. It has no -- he doesn't care about it.

Q. Have you ever heard of a representative or broker instructing his salesmen representatives to tell his clients that we are bidding in the pink sheets? A. No, I never did. No, sir.

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C. Testimony of Edgar Rouse

46. Edgar Rouse, Chairman of the local National Association of Securities Dealers Quotation Committee, during the period material herein, gathered over-the-counter quotations for publication in local newspapers. According to his credited testimony, he was approached by Batten to publish quotations daily in the Saber Boats stock. Rouse refused to do so but agreed to run quotations in the Sunday papers. The first quotation was in the June 5, 1960 issues when the market was quoted as 4-1/2 - 5-1/4. The quotations were run for about a month. Rouse testified that Batten was the most prominent dealer in the stock and the one he looked to for the actual market. On cross-examination by Batten, Rouse testified:

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Q. Mr. Rouse, haven't you seen, too, instances in stocks where it seemed like almost consistently for some period of time that one broker was probably the highest bidder for awhile in the sheets on a particular stock? A. That is right.

Q. And wouldn't you say also that almost as a matter of course a great many of the over the counter securities, especially where there is not a broad market, that there is usually one dealer maybe that is the prominent dealer in the market? For instance, let's take State Loan here in Washington. You would probably check with Johnston Lemon, wouldn't you? A. Yes, Johnston Lemon, J. H. Walker, anyone in the sheets to make a two-way market, Johnston Lemon, although they did underwrite the stock.

Q. Yes. So you certainly wouldn't ascertain that because a broker was a high bidder in the sheets for several days that he was rigging the market, would you? A. I didn't say anything about rigging at all, Mr. Batten.

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Q. I am just asking the question. I know you didn't. You wouldn't even assume that, would you, Mr. Rouse? You see the question has been raised about high bid in the sheet. That is no indication the market is being rigged, is it, Mr. Rouse? A. Not that I know of.

D. Registrant's Transactions in Saber Boats after May 2, 1960

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47. After the underwriting was presumably completed, the registrant traded extensively in the stock of Saber Boats. From May 2, 1960 through June 30, 1960 it purchased 17,980 shares as principal. During the same period it sold as principal 17,996. On an agency basis, from May 2, through May 26, 1960 it effected transactions in 6,555 shares of which 5,655 shares were sold to customers and 900 shares sold to brokers.

E. Testimony of Edward Emerson

48. Edward A. Emerson testified in part as follows:

BY MR. BATTEN:

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Q. State your name. A. Edward H. Emerson.

Q. And your address? A. 1800 North Kirkwood Road, Arlington,

Q. And your occupation? A. I am Special Consultant on Stabilizing for this Commission.

Q. Mr. Emerson, do you recall a telephone call placed by myself to you on or about May 2, 1960? A. I remember about three telephone conversations with you and if I take it, this is the first one.

Q. I believe so. Yes, sir. That is right. Do you recall one I placed about May 2? A. I recall talking to you on about May 2, yes, sir. I don't guarantee to recall every word said one way or the other.

Q. You don't keep records of course? A. I ordinarily do and I looked for that one but I was without a secretary at the time. I simply 97 could not find it. I have a record of a second telephone conversation. That is why I dragged those things up; and a later one oh, perhaps, in July, is it? I don't remember.

Q. State what you can recall then of our first conversation. A. It was about Saber Boats, and you stated that you had completed your distribution of the block which was being offered and you wanted to know if it was proper for you to trade the security.

I think I questioned you because, while I have no written record of this conversation, these are automatic questions. Was there any

stabilizing? I think you said no. And was there any underwriting group or trading restrictions, and again, I think you said no. And then I said, that you were free to effect open market bids and purchases for the security.

98 Q. I believe I indicated to you during that conversation that I had noticed some other brokers did not go into the market; some other underwriters did not go into the market right away. A. That is quite correct, now that you bring it up and I think you said that for a time, you intended only to act in accordance with customers agency orders and act as agent. I am not sure about that but I think that was the tenor of the conversation and I told you this was quite proper.

Q. But I believe you told me you could not think of any rule why, you did not know why brokers did not trade right away, unless there was some restriction. You could not understand why they did not, but you had noticed several. A. On occasions, some dealers simply, as a matter of practice, feel it is safer not to go into the market for a period of time after they have completed their distribution.

Q. But in that particular case, I believe you stated that you could not see any reason why it would not be all right to see people trading, as long as you completed your distribution.

Do you recall a second conversation? A. I recall a second conversation and at that time, parenthetically, I stated before, I was without a secretary. We were short of help at the time, and the only reason I can think that a memorandum was not written on the first conversation was it was so perfectly ordinary, there was nothing out of the ordinary in any way about it.

99 The second one was sufficiently out of the ordinary, that as soon as I hung up, I dictated a memorandum concerning this conversation and in that conversation, I warned you about a proposed course of action that you had thought might be proper, and after my warning, you said you would not follow that course of action.

Q. I am trying to recall that conversation myself. A. As a matter of fact, I think I sent you a copy of our old Release 3056. It goes back

to 1938 or 1940, in connection with the thing.

It seems to me that you said that you had acted purely in a broker-age capacity for the first day or two. After the completion of your distribution, and I refreshed my memory at the beginning of this hearing, which was a couple of weeks ago. I have not looked at my files since.

Q. Would you like to look at it now? A. If you want me to. I can go through it without reference to those things.

Q. Sure. A. You stated, if I remember correctly, the price of Saber Boats had moved up a bit and that Jones-Krieger, I think it was, had come to you with a block of something like 300 or 500 shares at 6 3/8ths, and while up to now you had always acted in an agency capacity, on this occasion you thought you would take him as principle and I said 100 that that was perfectly proper. You then asked me if it would be proper for you to take all shares offered to you as principle and to execute all customers' orders. That is, all customers' orders, to buy as agent in the open market so that you could acquire an inventory of stock and I pointed out to you, if you executed all customers' orders to buy, as an Agent and in addition, took all stock offered to you as principle, then would only buy orders in the market, in effect, you could not help but run up the price of the stock substantially. At the same time, you would be acquiring an inventory and any further or any later sale of the acquired inventory at the higher prices would pretty much spell out a manipulation and you said something to the effect you had not considered that.

I think that is all there was to that conversation.

MR. BATTEN: Then another question: If a broker had a position 101 such as we described and are talking about and was acting as agent for customers who were buying more stock than they were selling -- they were recommending to their clients the purchase of the stock; they also had a position now of the stock -- if the broker simultaneously sold these shares to brokers as principal, then that would not be a distribution, would it?

THE WITNESS: It could be. It could be because it is all part of the same distribution. Now, may I refer you to the rule?

MR. BATTEN: Yes.

102 THE WITNESS: Rule 10(b)(6) -- I keep a clip on the thing to find it here -- Rule 10(b)(6) defines "completion" in these terms, and when you get over the beginning thing: "An underwriter, when he has distributed his participation, including all other securities of the same class as acquired in connection with the distribution, and any stabilizing arrangements and trading restrictions with respect to such distribution to which he is a party has been terminated . . ." Now, you here are referring to a situation where the underwriter has reacquired a block of stock in connection with this distribution and the underwriter has not sold that stock and until that stock is sold, there is a prohibition which fastens on him which prohibits him from bidding for or purchasing the security or recommending that his customers buy the security in the open market. He can recommend to his customers that they buy it from him and he can sell to them.

MR. BATTEN: As an agent?

THE WITNESS: As an agent or as principal. He can't sell to them as an agent; he can sell as principal.

HEARING EXAMINER: I think you are saying he can only act as principal there. You say he could recommend the purchase from him as an individual, but not on the market?

THE WITNESS: That is right. There are a number of exceptions to Rule 10(b)(6) and each one is on equal footing. Exception 5 permits the exclusion of agency orders either to buy or to sell if those agency orders are not solicited or initiated in any way, and exception 6 permits the underwriter to induce the purchase of shares which he is distributing along, as they are principal transactions on his part.

HEARING EXAMINER: That is right; he can tell people when he gets a reacquired block that he has --

THE WITNESS: "Wouldn't you like to buy this?"

103 HEARING EXAMINER: "Here is a part of the underwriting", and he will sell it to him at the offering price. I assume he would have to do that.

THE WITNESS: Yes, he can offer to and encourage them to buy and sell to them these shares as principal. But at the same time he cannot recommend to people that they buy similar shares of the same class and series in the open market and effect those transactions on an agency basis for them.

HEARING EXAMINER: And I think you are also saying he can't start acting as a trader on his own.

THE WITNESS: Yes. That is correct, until this distribution is completed.

MR. BATTEN: But the fact that it is bought into the trading account doesn't mean that the distribution is completed?

THE WITNESS: No. As a matter of fact, under these circumstances there should not be a trading account at this time. These shares which are the result, no matter how the cancellation was handled on the books, this is a cancellation and these are shares reacquired in connection with the distribution. Your own words, the customer did not pay for them. The distribution is not complete until those shares are sold.

MR. BATTEN: Let's say they were paid for though; they were paid for.

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THE WITNESS: If in a different case I assume the customer -- I mean this is an offering of 100,000 shares at \$2.00. If the 100,000 shares is paid for by "X" number of customers, the broker goes into the open market and buys some back from one of his customers. That is permissible.

MR. BATTEN: You wouldn't consider that a distribution, then. Those shares that were bought back from the customer, if they were paid for, those shares would not be a distribution, would they?

THE WITNESS: It is conceivable that they could be a distribution if there were enough of them, but in the ordinary course of the usual offering, when the underwriter buys back a few shares from this customer and a few shares from another customer and is continuously making sales at the same time, that is normal trading.

MR. BATTEN: You wouldn't consider 3,000 shares a large,

substantial amount, would you?

HEARING EXAMINER: Out of 160,000.

MR. BATTEN: To buy back from customers that had paid. Now, the customers have paid for the stock.

THE WITNESS: If these customers had paid for the stock and the underwriter was continuing in his trading operation, there is no reason why he would have to get out of the market or discontinue -- I mean as long as he was buying and selling and these came to him in the ordinary course of buying and selling.

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Q. Suppose a broker would like to hold 5,000 shares for a couple of months because he feels that the stock is going to go up. He has a thousand in his trading account, and he is trading the stock, and he would like to maintain a position of around 5,000 all the time, but he is swamped with orders and he loses a couple of thousand shares, and his position is lower than that -- do you see anything to prevent him from going into the market and trying to replace the stock that he has sold and replenish his position? A. May I rephrase your question?

Q. Yes, you may. A. As I understand the question asked of me, it was that the broker has a position of 5,000 shares which he wishes to maintain. He has no intention of distributing that 5,000 shares. He has a trading account and this goes a little long or short, and eventually evens out -- that is proper in my opinion.

Q. It is proper for him to go into the market and try to replenish the shares he lost? A. As long as he doesn't contemplate the distribution of that block of that 5,000 shares.

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Q. He can distribute it any time he wants? A. If he does, he has to withdraw from the market and pay attention to the provisions of Rule 10(b)(6).

HEARING EXAMINER: Mr. Batten has been asking you questions, I think, dealing with normal trading operations.

MR. BATTEN: Lets don't use this example --

HEARING EXAMINER: The distribution is over --

MR. BATTEN: The distribution is over.

THE WITNESS: Then, it is perfectly proper.

BY MR. BATTEN:

Q. And isn't it perfectly proper, Mr. Emerson, if a stock is trading, for example, the bid and ask is three to three and three quarters, and a broker were to lose stock at the offering price of three and three quarters, all the brokers in the sheets showing, maybe three to three and three quarters, or maybe one showing three and an eighth, showing a higher bid, the one actually losing the stock, may have a closer market. Isn't it quite normal for the broker to up his bid the next day? A. Quite normal.

Q. Right, and he could do it even the next day, hoping to replace that stock, less than three and three quarters? A. Quite normal.

Q. And he could do it for several days in a row? A. Still quite normal.

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Q. Highest bid in the sheets quite consistently? A. Yes, sir.

Q. Now, lets use the hypothetical case of a broker who took some shares back in an underwriting which we are going to assume has not been finally distributed. He took those shares back, and, if he were to sell those shares, even 10 minutes later, to an individual, the distribution would have been completed, would it not? A. If those shares were resold, yes, it would have been completed.

Q. And that customer could have been Frank Batten, couldn't he. It could be anybody? A. No, it couldn't be Frank Batten because Frank Batten would be the underwriter.

Q. No, Frank Batten is an individual. A. It says directly or indirectly in the rule, and we have always taken the position that those persons who control a third person are equally prohibited from doing the things that would be prohibited to that third person. Now, Frank Batten could have bought, for investment, at some future time, when he considered distributing or reselling his large block or whatever it is he had taken down, then Batten & Company, I would think, would have to give due regard to the rule.

109 Q. So, if this individual, and we will call him Frank Batten for this particular case, had sold, not to Batten & Company, then those shares -- but to other brokers, would there be anything wrong with that -- those brokers said, "I would like to buy your stock." A. Under what precise conditions? You say, "Would there be anything wrong with that?"

Q. Yes. A. I can conceive of quite a number of situations where there would be a lot wrong with that. If Batten & Company had taken back a block of stock, and knew it had that block under control, knew that it was raising the price in the open market, and then resold to those persons, without giving them -- the market, an opportunity to regain its normal equilibrium, it would seem to me that would be a violation.

Q. It wouldn't have a tendency to raise the price if those shares were sold. A. Anything the rule prohibits, any attempts to raise the price, prior to, or during a distribution, and that is what would be wrong with this situation.

Q. You wouldn't say that sales of stock have a tendency to cause the price to rise, would you? A. Certainly not. Sales ordinarily depress the market, but this was presented to me in the context of sales after a
110 series of purchases, which, in fact, raised the price.

111 F. Real Property Ownership of Saber Boats, Inc.

48. The offering circular used by the registrant in the sale of Saber Boats stock, dated February 25, 1960, states that "The corporation owns one half an acre of real property which has been zoned for commercial use, located 11 miles south of Washington, D. C. on the Maryland extension of South Capitol Street in Prince George's County. The balance sheet in the offering circular lists land and building, less reserve for depreciation, at a total value of \$26,425 out of total assets of \$67,204.69.

49. Stanley Berman was president of Saber Boats at all times material herein. He testified that the aforementioned real property known as the Indian Head property was formerly owned by himself and his mother. He further stated that in December, 1959, he and his mother

agreed to transfer this property to Saber Boats, or its predecessor, and that an appropriate deed was drawn up and signed by them conveying the real property interest. The offering circular states that prior to January 1, 1960, Berman had been operating as an individual trading under the firm name and style of Lighthouse. A corporation, Lighthouse, Inc., began to issue its stock on January 8, 1960. It changed its name to Saber Boats, Inc. on February 1, 1960.

50. Berman further testified that all parties concerned proceeded under the belief or assumption that Saber Boats had full title to the Indian Head property. It occupied the property and made payments for it. Some time later, according to Berman, he was informed by his attorney that no deed of transfer had been recorded. Another deed, dated July 18, 112 1960, between Stanley Berman and Rose Berman, as joint tenants, to Lighthouse, Inc. conveying the property in question was then prepared. It was recorded July 19, 1960. The only other deed of record prior to this recording was one conveying the premises to the Bermans on January 26, 1954. He was not certain if the first deed was to Saber Boats or to Lighthouse. It would appear from the second deed that the original transfer was to Lighthouse, Inc. since he testified that the second deed was a duplicate of the one originally made. He further testified that the original deed could not be found.

* * * * *

After the conclusion of the hearing, the Hearing Examiner recommended that the registration of Petitioners, BATTEN & CO. and MUTUAL be revoked in the public interest for violations of the Securities Act of 1933 and Exchange Act of 1934 and rules thereunder to which exceptions were made. The Commission entered such order on May 29, 1963, revoking the broker-dealer registrations of BATTEN & CO. and MUTUAL and named BATTEN as the cause of said revocation. Objections were made to this Order and the parties hereto have filed Agreed Issues.

51. Several witnesses testified as to the financial difficulties encountered by Saber and when they first became aware of them.

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Lee Byrd, a salesman who had been employed by Batten & Co., testified as follows:

Q. Mr. Byrd, when did you first find out that the company was in difficulty, Saber Boats -- approximately? A. Friday, the Friday week end -- I don't know, I guess that was the last of June when Mr. Woods, the secretary was in. I met her outside the office and she dropped the thunderbolt as to the bad checks floating around and the fact that she hadn't been paid for a couple of months or six weeks or something like that.

Q. This would be the last week end in June, the last Friday? A. That is right.

Q. And do you know when Mr. Batten found out for the first time? A. Oh well, I don't know when he possibly found out. I would have no way of knowing.

* * * * *

Edward Baroody, another salesman who had been employed by Batten & Co., testified in direct examination by Mr. Batten.

Q. Mr. Baroody, on or about July 1, we received news that Saber Boats was having difficulties. A stockholder meeting was held sometime later in July at the office of Batten and Company. Were you there? A. Yes.

114 Q. Did you hear me make a statement -- as a matter of fact, it was the only statement I made all evening -- that if there were any stockholders here who thought in any way, shape, or form that the stock of Saber Boats had been misrepresented to him, that please let me know before he left the hall that night. A. I remember that. I do.

Q. Did you see anyone come to me? A. No.

Q. Mr. Baroody, do you feel that Frank Batten did everything in his power to keep Saber Boats, Inc., alive? A. Yes, I do. I do. From experience myself.

Q. State how you formed that opinion. A. After the trouble with Saber Boats, complaints began coming in that the workers at the plant in Mayo, Maryland, were rebelling against the company. They were throwing rocks in the windows and they had not been paid for a number of weeks.

Mr. Batten instructed me to go to the bank and make a withdrawal of cash and go with he and the Saber attorney to Mayo, Maryland, to pay these people off and I went down with him one afternoon and Mr. Batten was threatened and so was the attorney, and all the people. It was a pathetic sight. I felt very sorry for them. They had not been paid. There were babies in carriages around there, who were -- well, we just -- I felt sorry for the people.

Mr. Batten personally walked through the crowds, got behind the desk and began paying the employees and he also did this the following Friday.

* * * * *

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Peter Malnoti, a customer of Batten & Co. who had purchased Saber stock testified:

Q. When did you talk to Mr. Batten? A. Well, after the company got into its financial situation, which was in early June, if I remember correctly.

Q. Do you recognize Mr. Batten? A. Yes, indeed.

Q. Do you see him sitting here? A. Yes.

Q. Will you state what you asked him, and what he replied to you, concerning Saber Boat, at that time? A. Well, the first inkling I had that there was something wrong, was when the newspapers did not carry the Saber Boat quotations in the Sunday edition, and it must have been the end of May, on Labor day, or on Declaration day, weekend, I believe, because I couldn't get ahold of Mr. Caughey until the following week, and this was the time he told me Saber Boat was in rather tough financial situations, checks had been returned for non-sufficient funds from laborers, and rather critical situation, at the time, and I tried to contact Mr. Batten that same day, or the next day, and I finally met with Mr. Batten, and Mr. Moore, his attorney.

Q. Did you say Labor Day weekend? A. No, Declaration Day.

MR. BATTEN: I think it was July 4th weekend.

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THE WITNESS: It was a holiday weekend, I am not sure which one.

MR. BATTEN: July 4th.

THE WITNESS: And I talked to Mr. Batten and Mr. Moore, and I believe Mr. Caughey was there also, about what was happening at Saber Boat, and Mr. Batten just said it was in rather bad shape. He had been down to try to meet the payroll of the employees at the main plant, and was trying to renegotiate for further funds.

BY MR. BROWN:

Q. Did you discuss the purchases -- for example, this last purchase on May 31, 1960 at a price of four and a half, in the light of the financial condition of Saber Boat, so shortly thereafter? A. Yes, I think I mentioned that to him. I also mentioned the fact that the President of the Company was rather well known for being a rather poor securities risk, shall we say. I thought it was a rather poor business move on his part to turn the proceeds of the underwriting over to Mr. Berman, and, as an officer of the Corporation, I thought he was rather negligent in keeping up with the situation. He put most of the blame, I think, on the accountants, if I remember correctly, saying that his records were, either not up to date, or incomplete. Mr. Batten himself had no real knowledge of the impending situation.

Q. Did Mr. Batten state about when he became acquainted with the fact that everything at Saber Boat Company was not as it should have been? A. Yes, I think he told me when he got notification that the checks
117 were being returned for non-sufficient funds.

Q. The Saber Boat checks? A. The checks that the organization had written to cover, I presume, most of the employee's salaries, although, probably, materials as well.

Q. Now, can you fix a time when he said he became acquainted with that fact? A. No, sir, I can't tell you exactly. I am sure, if I can recall correctly, it was just very shortly thereafter, that the whole situation became well known. It was a very short period of time between when he said he first knew about it and the actual fold up of operations.

Q. But, in any event, it was prior to July 4, 1960. Is that correct? A. I would say it was before that, yes.

* * * * *

John W. Wheeler, another customer of Batten & Co., who purchased Saber stock testified on cross-examination by Mr. Batten:

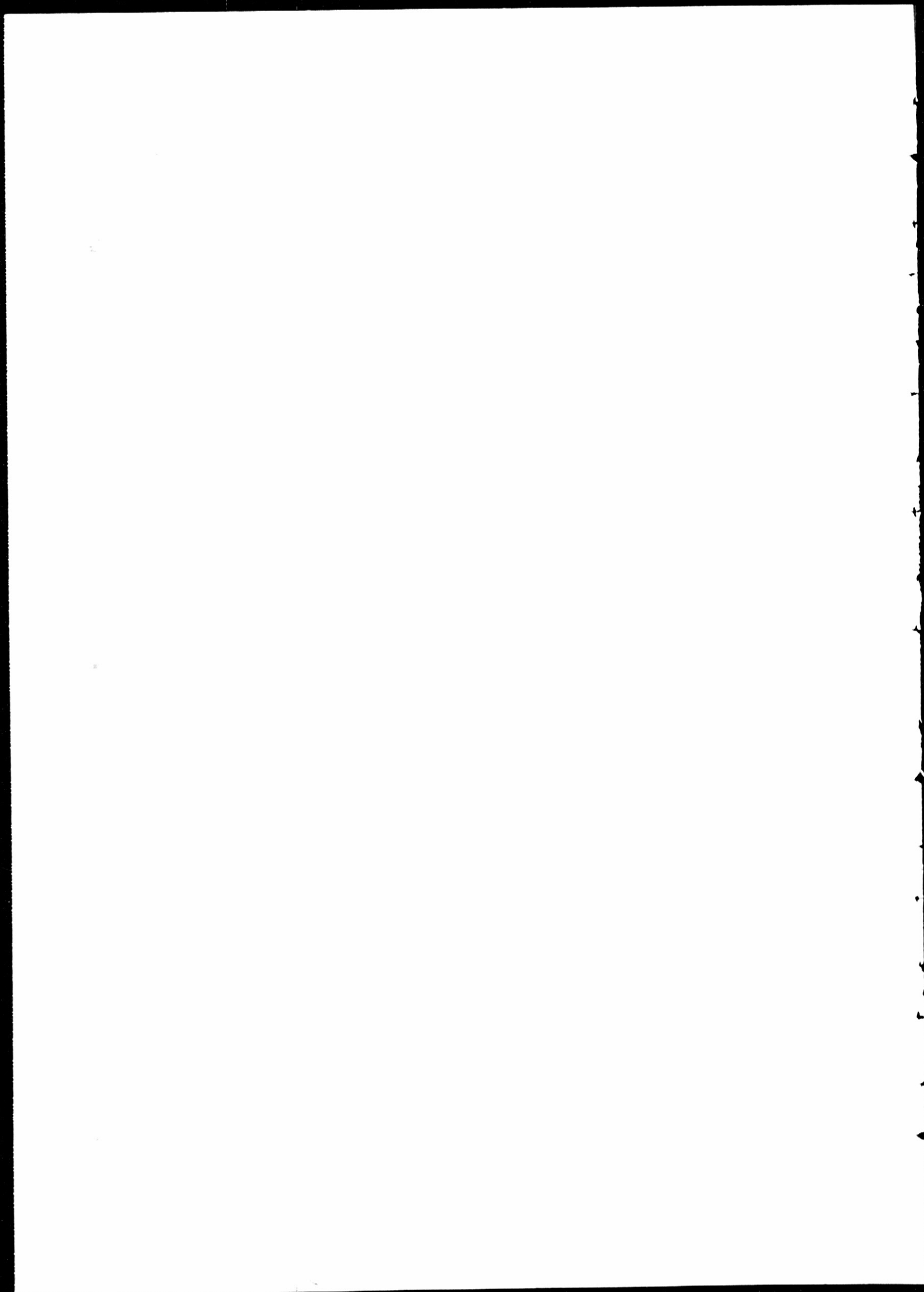
Q. Tell us what you heard about Saber Boats prior to July 1.

A. Well, I heard that it was a real good company.

Q. I mean on or about June 28 then. What did you hear that caused you to want to effect the sale? A. Well, I went by the plants, the one at the Bay and it was on a Saturday before I tried to sell on a Friday and 118 the building was padlocked and no one was around on the Saturday before I sold, or tried to, so it was along about that time that I was discussing it with Sergeant Wood and I just come to the conclusion that I would rather be out of it as in.

Q. And you came to this conclusion as a result of what? Did you have some conversations with some people connected with the company or employees of Saber Boats? A. No one that was employed with the company, no.

Q. Just hearsay because you had to do this? A. Just hearsay.



**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 18,018

SEPTEMBER TERM, 1963

**Batten & Company, et al., v. Securities and Exchange
Commission and United States of America**

**Before: Wilbur K. Miller, Circuit Judge
in Chambers.**

PREHEARING ORDER

The parties in the above-entitled case having submitted an agreement on the issues pursuant to Rule 38(k) of the General Rules of this Court, and the agreement having been considered, the agreement is hereby approved, and it is

ORDERED that the agreement shall control further proceedings in this case unless modified by further order of this court, and that the agreement and this order shall be printed in the joint appendix herein.

Dated: NOV 27 1963

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

BATTEN & CO., INC., MUTUAL FUNDS OF AMERICA,
and FRANKLIN L. BATTEN,

Petitioners,

v.

THE SECURITIES AND EXCHANGE COMMISSION
AND THE UNITED STATES OF AMERICA,

Respondents.

:

:

:

: No. 18,018

:

:

:

AGREED ISSUES IN THIS CAUSE

The Petitioners and the Respondents, Securities and Exchange Commission, hereby submit the agreed issues in this cause to be decided by this Honorable Court in the manner and form as follows:

1. Whether the issue of securities of Saber Boats, Inc., ("Saber"), which was offered under claim of exemption from the registration provisions of the Securities Act of 1933 pursuant to Regulation A, is an exempted security within the meaning of the Securities Exchange Act of 1934.

2. Whether said Saber Boats, Inc., stock was in fact exempted from the registration provision of the Securities Act of 1933 by virtue of Regulation A, and, if so, whether the exemption continued from on or before February 20, 1960,

until it was temporarily suspended by the Commission on or about November 25, 1960.

3. Whether the Commission's finding that on February 25, 1960, Saber commenced a public offering of 106,875 shares of its stock at \$2.00 per share is supported by substantial evidence, in view of the fact that the offering circular indicates that 4,875 shares of the Class B stock was to be offered by the petitioner, Batten & Co., Inc., the underwriter, at the market for its own account.

4. Whether the public distribution of the securities of Saber under claim of Regulation A exemption was completed on May 2, 1960 as set forth in Form 2-A filed with the Commission pursuant to Rule 260 of Regulation A or whether said public distribution continued subsequent to May 2, 1960.

5. If the said public distribution of Saber stock continued after May 2, 1960, whether there is substantial evidence to support findings of the Commission that petitioners, Batten and Batten & Co. willfully violated Section 5(a) and (c) and Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934 and rules thereunder.

6. Whether the 10,000 shares of Class B Saber stock found by the Commission to have been recorded as sold to certain of Batten's relatives, employees and friends just prior to or on May 2, 1960, were bona fide sales to the

public so as to close out the public distribution of said Saber stock.

7. Whether the statements found to have been made to prospective purchasers by salesmen of Batten & Co., Inc., or by Franklin L. Batten as to the future performance of Saber stock constituted violations of the anti-fraud provisions of Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934 and rules thereunder.

8. Whether there was substantial evidence to support the Commission's finding that it was in the public interest to revoke the registrations of petitioners Batten & Co., Inc. and Mutual Funds of America, Inc.

9. Whether the entry in the records of petitioner Batten & Co., Inc., kept in connection with the transactions relating to the 10,000 shares mentioned in issue 6, above, constituted violations of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder.

Respectfully submitted,

BATTEN & CO., INC.
MUTUAL FUNDS OF AMERICA, INC.
FRANKLIN L. BATTEN
By Counsel

/s/ Roland D. Hartshorn
519 Mills Building, Washington, D.C.

/s/ John A. Dudley, Special Counsel
Securities and Exchange Commission
Washington, D. C. 20549

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
May 29, 1963

1. On February 25, 1960 Saber Boats, Inc. ("Saber") commenced a public offering of 106,875 shares of its stock at \$2 per share pursuant to a claimed exemption from the registration requirements of the Securities Act of 1933 ("Securities Act") under Section 3(b) thereof and Regulation A thereunder. Batten & Co. was the underwriter for this offering on a best-efforts basis. On May 16, 1960 Saber and Batten & Co. filed with the Commission a report stating that the offering had been completed on May 2, 1960. However, at least 10,000 of the shares reportedly sold to the public at the announced \$2 offering price were recorded on the books of Batten & Co. as sold to certain of Batten's relatives, employees and friends just prior to or

on May 2, 1960. In fact Batten and Batten & Co. retained control over such shares, and Batten & Co.'s books recorded that shortly after the reported date of completion of the public offering most of such shares were repurchased by Batten & Co. from the customers. A number of the persons in whose names the sales and repurchases were recorded were unaware of and had not authorized any of such recorded transactions. In some instances checks issued by Batten & Co. in payment for the purported repurchase of shares were endorsed in the names of customers and deposited to the credit of Batten & Co. without the knowledge or consent of such customers.

2. In the period immediately following May 2, 1960, registrant, by use of the mails and interstate facilities, actively bid for, purchased, offered and sold Saber stock at prices higher than the public offering price stated in the Regulation A offering circular. Such sales included sales of stock which had been transferred into and out of the controlled accounts. Under the circumstances sales of such stock constituted a continuation of the distribution to the public of the offering of Saber stock and the report that such offering was completed on May 2, 1960 was incorrect and misleading. Moreover, under the circumstances the offering circular which registrant and Batten employed in the offer and sale of Saber stock contained untrue and misleading statements with respect to the plan of distribution and offering price. Accordingly, the terms and conditions of Regulation A were not complied with and no exemption from registration was available thereunder. No registration statement had been filed or was in effect with respect to the Saber stock and Batten & Co. and Batten in offering and selling such stock willfully violated Sections 5(a) and (c) of the Securities Act. In addition, by bidding for and purchasing Saber stock while engaged in a distribution thereof and by making false entries in its books and records, Batten & Co., aided and abetted by Batten, further willfully violated Sections 10(b) and 17(a) of the Exchange Act and Rules 17 CFR 240.10b-6 and 17a-3 thereunder.

3. In offering and selling Saber stock to customers subsequent to May 2, 1960, Batten & Co., while under the complete control and direction of Batten, made unfounded predictions as to the future price of Saber stock and led customers to believe that the distribution of said stock had been completed when in fact it had not. By these activities and by use of the false and misleading offering circular, Batten & Co., together with or aided and abetted by Batten, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder.

The Commission further concurs in the findings of the hearing examiner that the violations of Batten & Co. and Batten are serious and extensive, and, in view of Batten's ownership and control of Mutual, that it is in the public interest to revoke the registrations of both Batten & Co. and Mutual, and the Commission finds that Batten is a cause of such revocations. 1/

1/ Revocation of registrants' registrations as brokers and dealers will terminate their memberships in the NASD.

J. Ex. 2

34-7086

Accordingly, IT IS ORDERED that the registrations as brokers and dealers of Batten & Co., Inc. and Mutual Funds of America, Inc. be revoked effective upon the date of issuance of this order, and it is found that Franklin L. Batten, also known as Frank L. Batten, is a cause of this order.

By the Commission (Chairman CARY and Commissioners WOODSIDE, FREAR and WHITNEY), Commissioner COHEN not participating.

(Entered on the date first noted above.)

Orval L. DuBois
Secretary

1

JOINT EX. #4

24W-2344-1
1680 RS.

Regulation A

J. Ex. 4

Form 2-A

9 Ex.

SECURITIES AND EXCHANGE COMMISSION

Washington 25, D.C.

REPORT PURSUANT TO RULE 260 of REGULATION A

1. Name of Issuer Saber Boats, Inc.
2. Name of Underwriter Batten and Company
3. Date of this report May 12, 1960
4. (a) Date offering commenced February 25, 1960
(b) Date offering completed, if completed May 2, 1960
(c) If offering has not commenced, state reasons briefly Completed
by escrowing 2,500 shares of Class A common stock
5. (a) Total number of shares or other units offered hereunder 106,875 shares common stock, Class B non-voting
(b) Number of shares or other units sold from commencement of offering to date 106,875 shares Class B
(c) Number of such shares or other units still being offered None
6. (a) Total amount received from public from commencement of offering to date For issuer, \$204,000.00 including redemption of promisory note of \$6,150.00
(b) Underwriting discount allowed \$39,570.00
(c) Expenses paid to or for the account of the underwriters \$7,500.00
(d) Other expenses paid to date by or for the account of the issuer None
(e) Total costs and expenses None
(f) Proceeds to issuer after above deductions \$156,930.00
7. Use of net proceeds from commencement of offering to date:



- 2 -

	<u>Payments to officers, directors and affiliates</u>	<u>Payments to others</u>
(a) Salaries and fees	\$ _____	\$6,348.03
(b) Purchase of real estate	\$ _____	\$ _____
(c) Purchase and installation of machinery and equipment	\$ _____	\$2,764.33
(d) Construction of plant building and facilities	\$ _____	\$ _____
(e) Development expenses (product development, research, patent costs, etc.)	\$ _____	\$ _____
(f) Purchase of raw materials, inventories, supplies, etc.	\$ _____	\$81,502.68
(g) Selling, advertising and other sales promotion	\$ _____	\$ 5,284.96
(h) Other disbursements	\$ _____	\$ 4,100.00
(i) Totals	\$ _____	\$100,000.00
(j) Balance of cash proceeds on hand	\$20,000.00	\$36,930.00
	(Balance not received from underwriter at this time but will be transferred to our cash account)	

8. State briefly the nature and extent of each type of the issuer's principle activities to date.

The company has leased factory facilities at Mayo, Md. and is currently producing on an assembly line basis boats to meet orders. The company has sold its production through June 15th. The company has opened an auxiliary store at Burtonsville, Md. in an attempt to capture part of the Baltimore market. The issuer has also taken on the franchise line of Guy Lombardo fiber glass boats. The issuer is investigating new factory sites in the State of Georgia, specific counties of which may be giving special tax benefits and other inducements in order to have the factory located there.

9. State whether the offering has been discontinued, and if so, state the date and describe briefly the reasons for such discontinuance.

The offering has been completed with the exception that pursuant to a restriction on the alienation of the Class A common stock between the underwriter and promoters of the issuer, 2,500 shares have been escrowed in accordance with an Escrow Agreement attached hereto.

10. List the names and addresses of all brokers and dealers who have, to the knowledge of the issuer or underwriters, participated in the distribution of the securities offered during the period covered by this report.

Landrum Allen and Company, 1010 Vermont Ave., N.W.
G. J. Mitchell, Jr. Co., 729 - 15th St., N.W.
Alexandria Investment and Securities, 1426 G St., N.W.
Jones Kreeger & Co., 1625 Eye St., N.W.
Ferris and Company, 611 - 15th St., N.W.
Atlantic Equities, 1500 Mass. Ave.
A. T. Broad and Company, 931 - 15th St., N.W.
Capital Reserve Corp., Dupont Circle Bldg.
First Investment Planning Corp., 1500 Mass. Ave.

11. State the number of shares held by each promoter, director, officer or controlling person of the issuer, if different from the amount stated in the offering circular.

The only difference is that 4,780 shares of Class B common stock has been sold by Franklin L. Batten, thus decreasing his holdings in Class B common stock to 995 shares, owned jointly with his wife. These shares were purchased on the open market.

Date May 12, 1960

Date May 12, 1960

SABER BOATS, INC.

By 

BATTEN & COMPANY

By 

ESCROW AGREEMENT

This escrow agreement entered into this 25th day of February, 1960, between Saber Boats, Inc., a corporation organized under the laws of the State of Maryland, hereinafter referred to as the "Corporation", and Frank L. Batten of Batten and Company, hereinafter referred to as "Batten", and Affiliated Securities Transfer Service, Inc., of Washington, D. C. hereinafter referred to as "Securities" witnesseth:

Whereas in order to comply with the provisions of Rule 253(c) of the General Rules and Regulations under the Securities Act of 1933, as amended, the Corporation simultaneously with the execution of this agreement is depositing with the escrow agent, Securities, Two Thousand Five Hundred (2,500) shares of the Class A Voting Stock of the Corporation issued in the name of Batten and bearing Certificate No. 1. the deposit of which is hereby acknowledged by the escrow agent:

Now, therefore, the parties hereto agree as follows:

1. The escrow agent hereby accepts said shares in escrow and agrees to hold and keep said shares in accordance with the terms and conditions hereof and for the uses and purposes herein set forth, and to deliver said shares upon the performance of the conditions hereinafter set forth.
2. The escrow agent shall not be held to take notice of any terms of any agreement or any rights stated with respect to the deposited shares unless expressly stated in writing herein.
3. During the period of holding the deposited shares in escrow, no transfer or any other disposition of any of said shares or of any interest therein is to be made whether subject to this escrow agreement or otherwise but all of said shares are to be held intact as issued and placed in

J. Ex. 4

- 2 -

escrow hereunder.

4. The escrow agent is hereby authorized and instructed to hold the deposited shares in escrow until February 25, 1961, and written advice by the Corporation and Batten to the escrow agent and to the Securities and Exchange Commission that none of the deposited shares or any interest therein have been transferred or otherwise disposed of and that the deposited shares are registered under the Securities Act of 1933, as amended, or covered by a filing pursuant to the provisions of Regulation A under the General Rules and Regulations under the Securities Act of 1933, as amended, or are otherwise exempt from registration, whereupon said shares will be delivered to Batten.

5. This agreement is irrevocable.

6. The fee of the escrow agent for its services hereunder shall be \$25.00, payable at the time of the execution of this agreement, to be borne by

In witness whereof, we have subscribed our names this day and year first above written.

Franklin L. Batten

Suber Bantz, Inc. Secretary

L. L. Allen

AFFILIATED SECURITIES TRANSFER SERVICE, INC.

1010 VERMONT AVENUE, N. W.

WASHINGTON 5, D. C.

STERLING 3-3850

Batten & Co.

Stockbrokers

J. Ex. 5

Call STerling

**1835 K Street, N. W.
Washington 6, D. C.**

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MARKET RESEARCH LETTER

Saber Boats, Inc.

June 14, 1960

FROM: Sid Shore

Saber Boats, Inc., a corporation, chartered under the laws of the State of Maryland on March 2, 1959. Its primary functions are those of building and selling boats.

Administrative Office: 5025 Indian Head Highway, Washington, D. C.

Factory: Mayo, Maryland.

Retail Display Centers: Accokeek, Maryland; Burtonsville, Maryland; Laurel, Maryland; Towson, Maryland.

Officers and Directors of the Company are as follows: Stanley Berman, President; Eugene N. Sheeley, Vice President; Clarence B. Higgins, Vice President; Everette C. Simmons, Secretary & Treasurer; Marshall R. Diggs, Director; Frank L. Batten, Director.

The factory in Mayo is engaged exclusively in the manufacture of Saber Boats. The retail outlets that are owned and operated by the company, besides being exclusive dealers for "Saber Boats", are franchise dealers for Evenrude Motors, and exclusive dealers for the "Guy Lombardo Boat" line, and dealers in a complete line of marine hardware and accessories, including trailers and optional equipment.

The results of the Company's activities for the first quarter were excellent. Sales totaled \$161,000, of which \$77,000 came from nine days at the Washington Boat Show and \$65,000 from five days at the Baltimore Boat Show. During this period the Company did not spend any money advertising their products and only operated out of one show room. The results for the first quarter was that the Company showed net earnings of 20¢ per share after taxes.

During this second quarter which ends June 30th, sales and production have been very good. To date sales are over \$250,000. The factory is open around the clock plus a shift working Saturdays and Sundays, turning out Saber Boats as fast as possible to catch up with the demand. Sales are expected to run over \$300,000 for the quarter and the projected earnings are expected to be 30¢ per share, giving the Company net earnings of 50¢ per share for the six month period.

The future for Saber Boats, Inc. seems very bright. The Company is very optimistic in that they will be producing boats in their second plant either in the State of Georgia or Florida by next September. These states have offered to build them a plant to their specifications and lease it to them at a very low rent if they will bring their industry into the state. There is also a tax benefit to be offered by these states.

J. Ex. 5

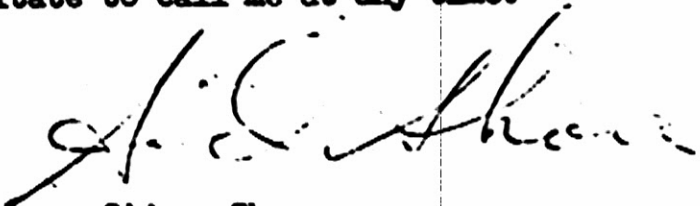
The Company has trained three teams of men to show the Saber Boats in every boat show they can along the East Coast, and to date they have reserved space in 22 shows. If they only average \$50,000 of business at each show they can easily have over \$1,000,000.00 worth of business on the books by next spring.

The Evenrude Motor Company has guaranteed the Company a franchise in every city in which Saber shows the boat if they will agree to open a retail outlet. This is a very lucrative proposition but it will take additional capital and the easiest way to get this capital would be to issue rights to all stockholders. This could develop into a very interesting situation.

At the current reasonable price range from \$5½ to \$10, Saber Boat stock is recommended as a "Buy" for the following reasons:

1. Stock is currently selling at less than a 20-1 price earning ratio as compared to the market average of 35-1 for recreational stocks.
2. Expansion plans for the immediate future add greater potential growth in the stock during the next 12 to 18 months.
3. Possible issuance of rights to stockholders adds to the value of the stock.
4. The wide distribution of the 102,000 shares of stock held publicly adds to the stability of the stock.
5. Possible price level of this stock by the year's end is 12-15.

For any further information please do not hesitate to call me at any time.


Sidney Shore
Account Executive

Batten & Co.

Investment Securities

Stockbrokers

J. Ex. 5

Call STerling 3-3060

1835 K Street, N. W.
Washington 6, D. C.

16 Ex.

MARKET RESEARCH DIVISION

Boat Stocks Are Growth Stocks

Probably no other industry will benefit from the trend to higher incomes and increasing leisure (recreation) time, as much as the boat industry.

Some analysts predict that boating will be the outstanding growth industry of the next ten years.

Sales of outboard motor boats, where reinforced plastic construction has the greatest hold (low maintenance), have risen rapidly, and many are predicting that in another year the reconstructed plastic boat may well run away with the boat market.

Until recently the financing and insuring of boats has been a problem, but now prospective boat purchasers are attracted by the low down payments and easy terms available (up to five years to pay).

All these factors lead one to conclude that we are on the brink of a big boating boom.

Although there are many makers of boats in the nation, only a few of them have stocks available to the public.

The following market results are indicative of the investor enthusiasm for recent offerings to the public of boat stocks.

MARCH 1954**GLASSPAR CO.**

First offered 250,000 shares @ \$1.00
5% Stock Dividend was declared February 1959
2 for 1 Stock Split was declared November 1959
Reducing original cost to 47.6c per share
Currently selling over \$20.00 — 23 1/2

DECEMBER 1958**PERFORMER BOAT CORP.**

First offered 300,000 shares @ \$1.00
Started trading February 20, 1959 @ 2 3/8
Currently selling over \$6.00

APRIL 1959**PEARSON CORP.**

First offered 225,060 shares @ \$1.00
Started trading May 11, 1959 @ 3 3/4
Currently selling over \$10.00

AUGUST 1959**OWENS YACHT CO., INC.**

First offered 1,000,000 shares Out Standing
300,000 shares 1st Public Offering @ \$8.00
Started trading August 5, 1959 @ 11 1/4
Currently selling over 12 - 12 1/2 — 18 3/4

NOVEMBER 1959**SPAN-AMERICAN BOAT CO., INC.**

First offered 175,000 shares @ \$1.00
Started trading November 13, 1959 @ \$2.00
Currently selling over 3 1/2 - 4 — 4 1/2

We supply daily quotes in these boat stocks and invite your inquiry.

THE STATEMENTS ABOVE, WHILE NOT GUARANTEED, ARE BASED UPON INFORMATION BELIEVED TO BE RELIABLE.

We may have a long or short position in shares of the above company.

OFFERING CIRCULAR

J. Ex. 6

24W-2344-7

A-0

1642

17 Ex.

[Handwritten signature]

2,500 Shares
Class A Voting Common Stock
(Par Value \$0.10)

106,875 Shares
Class B Non-voting Common Stock
(Par Value \$0.10)

SABER BOATS, INC.

ACCOKEEK, MARYLAND

Transfer Agent

AFFILIATED SECURITIES TRANSFER SERVICE, INC.
WASHINGTON, D. C.

Offered for Corporation			
	Price to Public	Underwriting Commissions (1)	Proceeds to Company (2)
Per Share	\$2.00 (3)	\$0.40	\$1.60
Total	\$204,000	\$40,800	\$163,200
Offered for Underwriter			
Per Share—Class A	At Market	See (1)	Proceeds to Underwriter
Per Share—Class B			

- (1) In the Underwriting Agreement, the corporation and the Underwriter have reciprocally agreed to indemnify each other against certain civil liabilities, including liabilities under the Securities Act of 1933. Mr. Frank L. Batten, principal officer of Batten and Company, is a Director of the corporation. Mr. Batten has been issued 2,500 shares of the Class A Voting Common Stock and 4,875 shares of the Class B Non-voting Common Stock of the corporation. To some extent, the issuance of these shares may be regarded as an additional underwriting commission. These shares are being offered for the benefit of the Underwriter. In no event, will aggregate offering price exceed \$300,000.
- (2) Before deduction of expenses of this offering, estimated not to exceed \$7,500 to the corporation.
- (3) The offering price of the stock is not intended to bear any direct relation to the present assets and past or present earnings (or deficit) of the corporation. The price per share is arbitrary. There is no assurance that any of the shares will be sold.

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.

Offered By

BATTEN AND COMPANY

1835 K Street, N.W., Washington, D. C.
Sterling 3-3060

Date of This Offering Circular: February 25, 1960

INTRODUCTORY STATEMENT

Since 1958, the boating industry has enjoyed a tremendous boom. New, lighter-weight materials led to the development of larger portable boats which could comfortably accommodate a small family (including toilets, galley and bunks). The outboard motor has become dependable, quieter, and greatly increased in power.

In 1954, according to the official journal of the industry, *Boating*, (January, 1959)*, the dollar income from the sale of outboard motors was \$116,000,000. In 1958, these sales increased to \$254,000,000.

In 1954, approximately 225,000 outboard boats were sold*, whereas in 1958, 316,000 outboard boats were sold*.

Newsweek, in its December 14, 1959 issue (page 53) states:

"At least 75 million Americans will be boating in 1970, more than twice the present number; outboard boats and motors will lead the aquatic parade, with the industry expecting 15 million afloat by 1970, a 100 percent increase."

In April 1954, Stanley Berman (the President of the corporation, who is also the promoter), after two years sales experience with a local retail marine distributor, set himself up as a marine dealer and assembled boat kits of another manufacturer. He first purchased land and erected a 10' x 35' frame building with a glass front, as an office and display room. Since that time, he has had to increase his facilities. In 1955, he enclosed an additional 20' x 35' of space. In 1957, he enclosed another 18' x 25' of space. In 1958, he built a brick and cinderblock store and factory with 1,250 additional square feet of space.

In 1956, he assembled no more kits, but began taking orders for a boat of his own design which he called "Saber". Toward the end of that year, he obtained a direct factory franchise from the Evinrude Outboard Motor Company.

In 1957, he built 12 "Saber" Cruisers and sold 18 new Evinrude Motors.

In 1958, he built 33 "Saber" Cruisers and sold 118 new Evinrude Motors.

In 1959, he built 63 "Saber" Cruisers and sold 104 new Evinrude Motors.

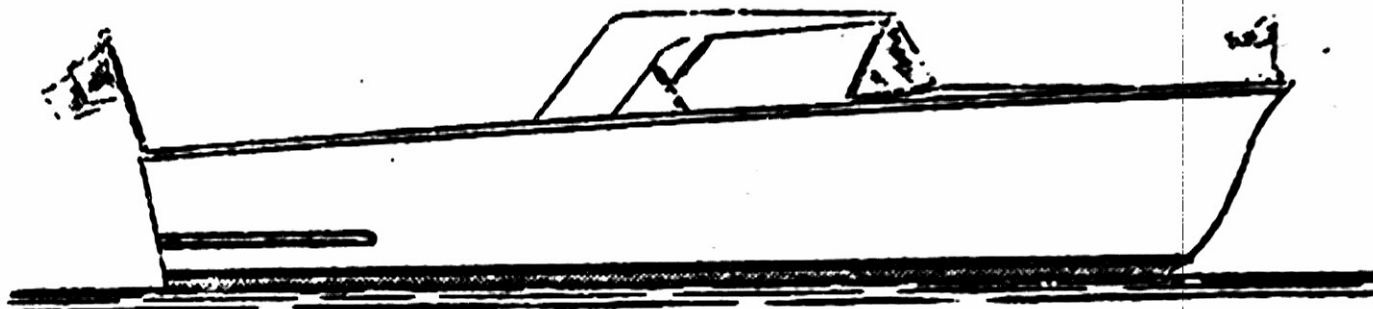
* Prepared by the Industry's Advisory Committee of Statistics; The National Association of Engine and Boat Manufacturers; The Statistical Department of the Outboard Motor Club of America.

(The use of these quotations from *Boating* and *Newsweek* are not intended to imply that the issuer will be able to operate on a profitable basis.)

J. Ex. 6

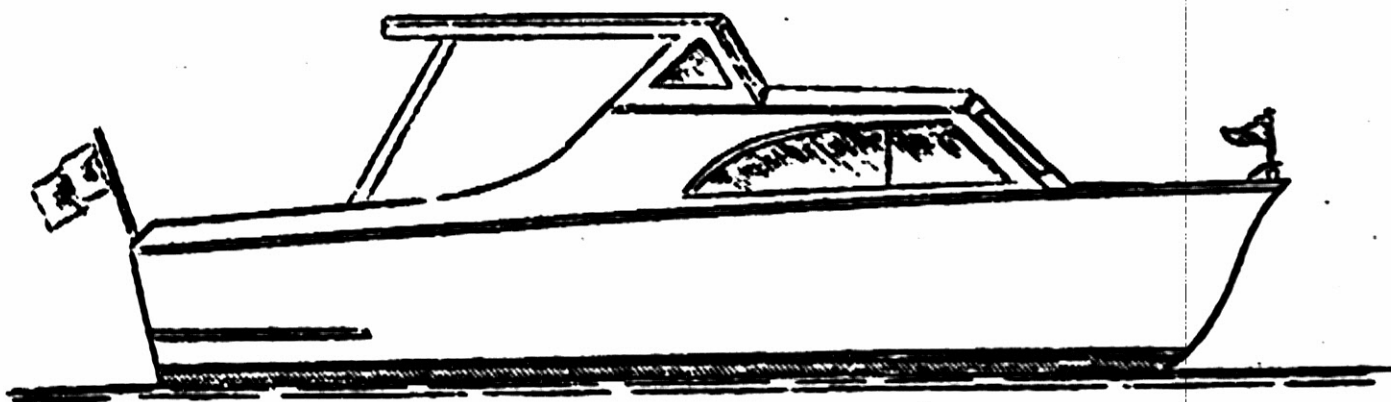
THE PRODUCTS

The corporation's manufactured product is its "Saber" Cruiser. The "Saber" is a family all-purpose boat which is being built in three models, the first of which is the "Saber" Cruising Runabout, as illustrated below:



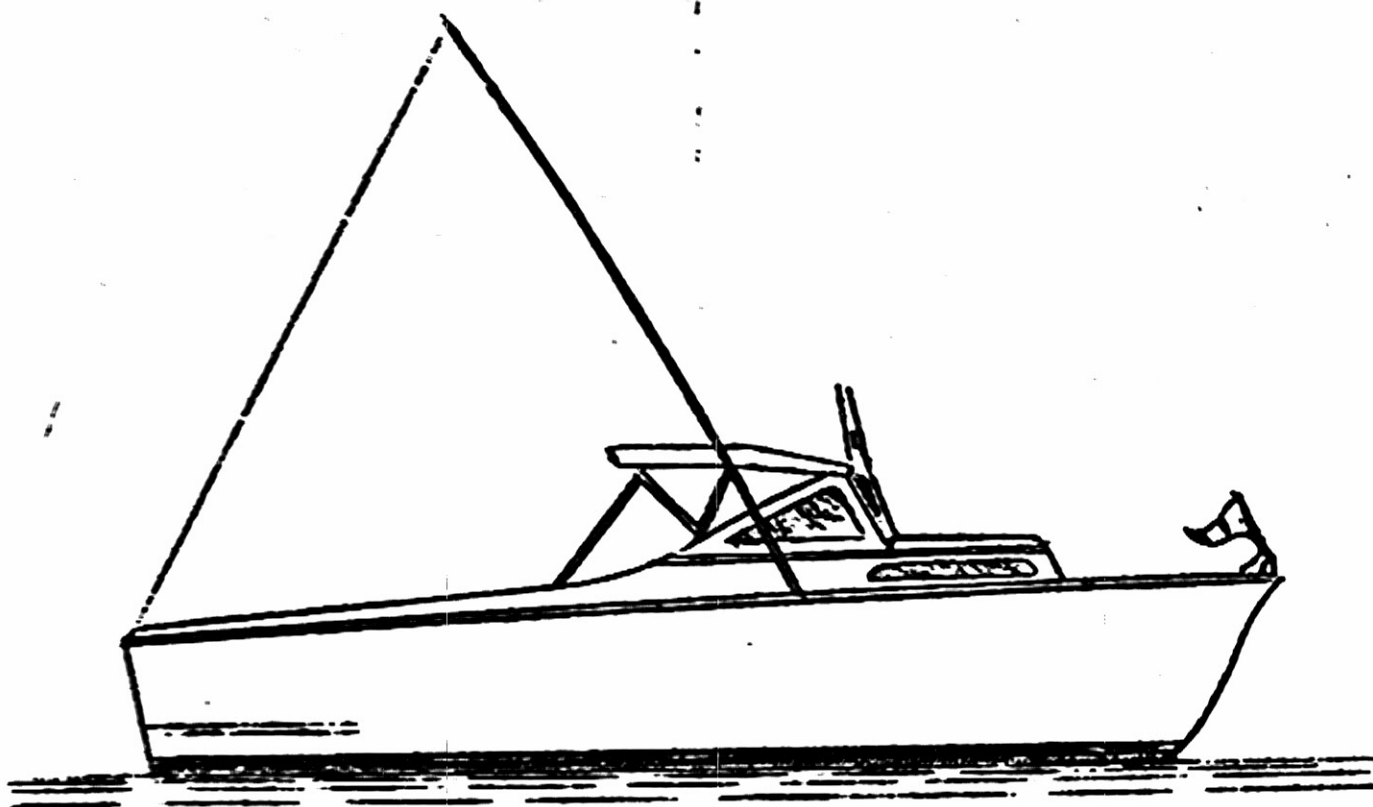
The Cruising Runabout has a folding Navy top with side curtains and a curved Plexiglass windshield. It will contain two drop berths with provisions included for the installation of a head.

The second is the "Saber" Family Cruiser.



The Family Cruiser is equipped with toilet room, galley cabinet, two bunks and mattresses, and a flying bridge windshield.

The third is the "Saber" Sport Fisherman which will be a more deluxe model and which will be priced according to the installed equipment.



The appurtenances applicable to the Sport Fisherman will be available such as outriggers, fishing chairs and bait tanks. The living quarters are at a minimum allowing overnight accommodations for two people with a head available.

All "Saber" models have a 21' hull, measured straight line over the keel, with a "constant-section" planing bottom. The frames and all other solid wood are of the best grade of Dark Philippine Mahogany. The planking is plastic-covered marine plywood. All fastenings are brass screws and bolts. For additional strength, absolute water-tightness, long life, and minimum maintenance, the bottom is covered with heavy gage glass cloth laid in resinous plastic.

In addition to the sales of the "Saber" Cruiser, the corporation will continue to retail, on a factory franchise basis, Evinrude Outboard Motors. In 1958, the company was first in unit sales of Evinrude Outboard Motors in the Greater Washington area. In 1959, the corporation was first in unit sales of Evinrude Outboard Motors in the Greater Washington area. By virtue of a dealer sales

J. Ex. 6

agreement, the corporation has a non-exclusive right to sell new Evinrude Motors and parts and accessories therefor in the territory described as Accokeek, Maryland and Vicinity. This agreement continues through the date of September 30th, 1960, unless it is terminated sooner in accordance with the terms of the agreement.

Furthermore, in its showrooms, the corporation intends to display a wide variety of boat parts, marine accessories, marine paints and boat trailers, offering its customers metropolitan area telephone and delivery service and monthly credit accounts. The corporation will prepare a catalogue of these parts and accessories and paints and sell them at 20% below the manufacturers' suggested list prices. These boats will continue to be offered for sale to the consumer at the corporation's display rooms, 11 miles south of Washington, D. C.

If all of the stock offered herein is sold, the corporation intends to commence its own financing plan which will enable the customer to stretch the time of payment from three years to four years and thus decrease the size of monthly payments. It is expected that \$28,175.90 of the proceeds of this offering will be the initial capital of this phase of operation.

COMPETITION

There are a great many brands of boats being manufactured in various parts of the country. Some of these boats have a nation-wide distribution and are widely advertised. The corporation will be in competition with other companies possessing greater resources, both from the manufacturing and retailing point of view.

Last year, Stanley Berman, who may be called the promoter, sold 63 boats with the trade name of "Saber". These sales were obtained by insertions of advertising in the classified sections of local newspapers. No radio or television advertising was utilized. No brochure was offered describing the boat, and the "Saber" boat was not offered for sale at any other location.

The corporation also intends to establish other show rooms, one to be in Virginia and one in Montgomery County, Maryland. The corporation has not selected the sites at this time, but it intends to do so at the earliest opportunity, thus allowing the corporation to offer its customers more convenience. This will also allow the corporation to get maximum benefit from its projected advertising campaign.

This year for the first time, the corporation has reserved space in both the annual Chesapeake Bay and Washington Boat Shows. In addition, the corporation intends to launch a vigorous television and radio advertisement program. The officers and Directors believe that the design of the "Saber" has been tested and proven and that proper presentation of its product in recognized form of advertising media will result in increased sales.

APPLICATION OF PROCEEDS

Assuming that the entire issue will be marketed, the net proceeds after commissions and estimated expenses will be approximately \$155,700.00. The principal purpose of this issue is to provide funds for the enlargement of the retail business of the corporation, the production of an inventory of completed boats, the establishment of the funds sufficient to carry a substantial amount of our anticipated accounts receivable, including the provision for general expenses and operation of the corporation until its products are being marketed and to provide working capital.

Since there is no firm commitment for the purchase of any of the stock being offered, the corporation has no assurance it will receive all of the proceeds referred to herein. To the extent that proceeds are available, the monies are estimated to be expended in the amount and order of priority as follows, which amounts are based upon approximations rather than detailed estimates as determined by the Board of Directors.

REDUCTION OF ACCOUNTS PAYABLE	\$ 16,224.10
CURTAILMENT OF NOTES PAYABLE	33,300.00
SABER BOATS FACTORY—RENTAL (One Year)	6,000.00
INVENTORY OF MATERIAL FOR BOATS	29,000.00
RETAIL DIVISION—INCREASE INVENTORY	15,000.00
RETAIL SERVICE DIVISION—	
ADDITIONAL TEST EQUIPMENT	6,000.00
WORKING CAPITAL	5,000.00
LEASING OF TWO ALTERNATE LOCATIONS (One Year)	5,000.00
ADVERTISING CAMPAIGN (Estimated—6 months)	12,000.00
TO SET UP FINANCE DIVISION TO CARRY OWN	
ACCOUNTS RECEIVABLE	28,175.00
TOTAL	\$155,700.00

In the event that only part of the stock offered herewith is sold, it will be necessary to modify the aforesaid proposed program. In any event, no arrangement has been made for the refund of any proceeds to the purchasers, and any proceeds received will be issued at the discretion of the Board of Directors and in such a manner which may best benefit all of the stockholders.

THE CORPORATION

Saber Boats, Inc. was chartered under the laws of the state of Maryland on March 2, 1959. Its primary functions are those of building and selling boats. As incident thereto, on the retail level, it offers for sale all materials and accessories which its potential customers may desire, including trailers and optional equipment.

Prior to January 1, 1960, Mr. Stanley Berman had been operating as an individual, T/A Light House. A corporation, Light House, Inc. was in existence but none of the stock of that corporation was issued until January 8, 1960. On that date, the corporation issued shares of its stock in exchange for assets and services as more fully stated under the paragraphs captioned "Capitalization" and "Remuneration of Officers and Directors and Materials Transaction."

On February 1, 1960, Light House, Inc. changed its name to Saber Boats, Inc.

PROPERTY AND PLANT FACILITIES

The corporation owns one half an acre of real property which has been zoned for commercial use, located 11 miles south of Washington, D. C. on the Maryland extension of South Capitol Street in Prince George's County.

Upon this property, there is located the factory and show room of the corporation. The corporation has constructed one building containing 1,500 square feet for production facilities. One half of that amount or 750 square feet has a concrete floor base. The building is of frame and glass construction.

In an adjoining building, the corporation owns, subject to mortgages reflected on its balance sheet, a brick and cinderblock building containing 1,225 square feet, one third of which is used as an office and as a display area, and the remaining two thirds for boat assembly.

The corporation has machines and equipment on hand sufficient, in its opinion, to build boats in accordance with its anticipated sales.

The corporation is looking for and has investigated various sites which will enable it to add another 10,000 square feet of indoor space for the establishment of a production line type assembly of its product. This will free the total of the present boat assembly area for retail sales, display and sales. Lacking the opportunity to lease such space, the corporation may elect to use part of the proceeds of this issue to construct a new building containing that required amount of floor space. The estimated cost of this building would not be in excess of \$35,000.

The corporation is also looking for sites which are adaptable for the retail display of its products. These sites will be located so that the corporation can offer its customers greater convenience and obtain maximum results from its projected advertising campaign. It is the intention of the corporation to lease these locations.

CAPITALIZATION

The capital stock of the corporation consists of 400,000 shares of \$0.10 par value stock divided into two classes as follows:

1. Class A—100,000 shares of Common Stock, with full voting privileges, par value—\$0.10.
2. Class B—300,000 shares of Common Stock, with no voting privileges par value—\$0.10.

J. Ex. 6

If after two years from the date of this offering, the corporation does not earn a sum of money sufficient to pay a dividend equal to 6% of the book value of each share of stock that is issued and outstanding, upon that occurrence and upon a vote of two third majority of all Class B stockholders, Class B stockholders shall be enabled to vote and have all rights and privileges of Class A stockholders.

When issued, the Class B Non-voting Common Stock offered herein will be fully paid and non-assessable. Both classes of stock carry pre-emptive rights. With the exception of the voting privileges stated above, all shares have equal rights.

The capitalization of the corporation before and after the issuance and sale of the Class B Common Stock, Non-voting, herein offered, will be as follows:

<u>Title of Class</u>	<u>Amount Authorized</u>	<u>Amount Previously Outstanding</u>	<u>Amount to be Outstanding</u>
Common Stock \$0.10 Par Value Class A—Voting	100,000	27,500 shares	27,500 shares
Common Stock \$0.10 Par Value Class B—Non-voting	300,000	18,000 shares	120,000 shares

MANAGEMENT

The principal officers and directors of the corporation, their addresses, and their shareholdings as of January 7, 1960, are as follows:

	<u>Address</u>	<u>Office</u>	<u>Shares</u>
Stanley Berman	310 Roseld Court Glassmanor, Md.	President & Director	12,500 Class A
Eugene N. Sheeley	1309 Floral, N.W. Washington, D. C.	Vice-President & Director	3,334 Class A
Clarence B. Higgins	Woodburn Road Annandale, Virginia	Vice-President	3,333 Class A
Everette C. Simmons	19-Holbrook Drive Hillcrest Heights, Md.	Secretary & Treasurer	500 Class B
Andrew H. Hooker	7011 Fresno Street Seat Pleasant, Md.	Director	3,333 Class A

	<u>Address</u>	<u>Office</u>	<u>Shares</u>
Marshall R. Diggs	2556 Mass. Avenue Washington, D. C.	Director	5,250 Class B
Frank L. Batten	1414 - 17th Street, N.W. Washington, D. C.	Director	2,500 Class A 4,875 Class B

Stanley Berman is a 25-year resident of the Washington, D. C. area. For two years, he was Assistant to the Director of Publicity and Advertising of the Hecht Company. After two years with W. J. Little Boat Company in Washington, D. C. where Mr. Berman handled retail sales, he started to assemble boat kits on a contract basis. In 1956, after two years of assembling these kits of other manufacturers, he constructed his first boat under his own design and under the trade name of "Saber".

Eugene N. Sheeley, Vice-President and Director in Charge of Engineering, has had 40 years of practical experience in the engineering field covering all phases of design, research and development, production methods, and production tooling. He has served as staff member in Marine Engineering for the Marine Design Department of the Army; Staff Engineer in Design with the Navy Bureau of Ships, Small Boat Division; and a year and a half as Section Chief of the Engineering and Design Group of the David Taylor Model Basin. Throughout all of this time, he has been an ardent yachtsman, designing and building pleasure boats. For the past one and a half years, he has been a consultant to Saber Boats, Inc., producing and controlling the manufacture of the 1958 and 1959 models.

Clarence B. Higgins, Jr. Vice-President, is currently Assistant to the Vice-President in Charge of Ordnance, General Time Corporation. He is a Lt. Commander in the United States Naval Reserve and a graduate of Dartmouth College. He will handle promotional activities and advertising for the corporation.

Everette C. Simmons, Secretary and Treasurer of the corporation, has been a certified public accountant since 1953. He is a graduate of the Strayer College of Accountancy. For seven years, he was Assistant Cashier for the National Capital Bank, handling audits and operations.

Andrew H. Hooker, Director, is currently Assistant Cashier and Bank Manager for the Bank of Maryland, with which he has been associated for the past ten years.

Marshall R. Diggs, Director, has been in the practice of law for the past 47 years and has been a resident of the Washington, D. C. area for the past 30 years. He is a graduate of Yale University and is admitted to the Bars of the states of Illinois and Minnesota. He has been Secretary and General Manager of the Walraven Advertising Service; Vice-President of Southwestern Sewer Company; Executive Assistant Comptroller of the Currency for the United States of America from 1934 to 1938 and Acting Comptroller of the Currency for the United States of America from February through October in 1938. He is currently a Director of the Walraven Book Cover Company, Walraven Book Company, Ltd.; Secretary and Director of Air Ambulance Service, Inc.; and Director of Barney Neighborhood House.

Frank L. Batten is a 10-year resident of the Washington, D. C. area. In Washington, he served as an Account Executive for Francis I. Dupont Company and Bache and Company, members of the New York Stock Exchange. In April 1956, Mr. Batten formed Mutual Funds of America, and in February 1959, he founded Batten and Company, both of which are registered with the Securities and Exchange Commission as broker-dealers. He is President and majority stockholder of these companies.

REMUNERATION OF OFFICERS AND DIRECTORS AND MATERIAL TRANSACTIONS

The total annual remuneration of the executive officers of the corporation is not expected at this time to exceed \$20,000.

The salaries of each of the highest paid officers on an annual basis are: Stanley Berman, President and Director—\$7,500; Eugene N. Sheeley, Vice-President and Director—\$10,000. No other officer or director is to receive compensation with the exception of Everette C. Simmons, Secretary and Treasurer, who is a certified public accountant and who is expected to receive regular compensation not to exceed a sum of \$100 per month as payment for services to be rendered of an accounting nature.

The salaries of these executive officers are frozen for a period of one year from the date of this offering circular. Compensation thereafter is to be determined by the Board of Directors, but shall not be less than current compensation except by written agreement.

In addition to the remuneration stated above, the following officers and/or directors have been issued stock in consideration for services performed or to be performed. This stock was issued under an exemption afforded under Section 4, Paragraph 1, of the Securities and Exchange Commission Act of 1933, and may to the extent related below be considered remuneration.

12,500 shares of Class A Voting Common Stock have been issued to Stanley Berman in consideration of the transfer of the net tangible assets of his Mother, Rose Berman, and himself, and of all personal properties used in the manufacture and sale of boats, which net tangible assets are more particularly reflected on a balance sheet of Stanley Berman, T/A Light House, dated January 8, 1960, supplemented by an inventory of machines and equipment attached thereto.

3,334 shares of Class A Voting Common Stock have been issued to Eugene N. Sheeley in consideration for services performed in redesigning the "Saber" Boat and for the establishment of a production system.

3,333 shares of Class A Voting Common Stock have been issued to Clarence B. Higgins in exchange for services performed and to be performed for the corporation in the public relations field.

500 shares of Class B Non-voting Common Stock have been issued to Everette C. Simmons in consideration for accounting services performed in connection with this offering.

3,333 shares of Class A Voting Common Stock have been issued to Andrew H. Hooker in exchange for services performed for the corporation to date and to be performed in the future.

5,250 shares of Class B Non-voting Common Stock have been issued to Marshall R. Diggs in exchange for services performed relating to the preparation of this offering.

2,500 shares of Class A Voting Common Stock and 4,875 shares of Class B Non-voting Common Stock have been issued to Mr. Frank L. Batten in exchange for services to be performed as a Director of the corporation.

2,500 shares of Class A Voting Common Stock and 4,875 shares of Class B Non-Voting Common Stock have been issued to B. Guerry Moore in payment for legal services performed for the corporation to date and to be performed for the corporation in connection with the current underwriting.

2,500 shares of Class B Non-voting Common Stock have been issued to Robert H. Symonds for legal services performed and to be performed for the corporation.

Upon the completion of the sale of this offering, the officers, directors and/or promoters as a group will hold 30.8% of the combined Class A and Class B Common Stock outstanding, for which said group have transferred net tangible assets of \$7,030.04. The public will hold 69.2% of the issued combined Class A and Class B Common Stock for which it will have paid \$204,000. The officers, directors and/or promoters as group will hold 100% of the issued Class A Voting Common Stock. These percentages may be altered if the shares held by Frank Batten are sold to the public.

UNDERWRITERS AND TERMS OF THE OFFERING

The corporation has entered into an Underwriting Agreement with Batten and Company who is a broker-dealer registered with the Securities and Exchange Commission. This underwriting is to be performed on a best efforts basis and there is no guarantee that any of these shares will be sold by the underwriter. Batten and Company is entitled to receive 20% underwriting commission, and is to be reimbursed its expenses not to exceed \$7,500 from the first sales of the stock offered hereunder.

Frank L. Batten is a Director of the corporation and by virtue of the Underwriting Agreement, in the event he resigns as such, he retains the right to name one Director on the Board of Directors of the corporation. This Underwriting Agreement is dated February 2, 1960. It is in effect for one year and may be terminated by the issuer or the underwriter at the expiration of this period upon giving 15 days' notice.

For a period of ten years from the date of the agreement, the underwriter, Batten and Company, has the right of first refusal to offer for sale any new securities of the issuer at a price competitive to the best bona fide offer the issuer can secure. This right survives the termination of the agreement by either party if 75% of this issue has been sold out.

The underwriter covenants and has agreed that he will expend no less than \$7,500 for the printing of offering circulars and advertising this issue, however, the underwriter has the right to reimburse himself up to the sum of \$7,500 from the proceeds of the first securities sold.

The Class B Common Non-voting Stock offered herein may be sold to the public in blocks of not less than 50 shares nor more than 500 shares to any one purchaser.

The underwriter is not entitled to any commissions in the event Rose Berman or Lillie Hutt, who hold promissory notes of the issuer in the sum of \$6,150, elect to exchange such notes for Class B Non-voting Common Stock of the corporation at the sale price offered to the public if these individuals make this election prior to the time the issue is sold out.

Frank L. Batten has been issued 2,500 shares of Class A Voting Common Stock and 4,875 shares of Class B Non-voting Common Stock in exchange for his services as a Director to be performed for the corporation. To some extent, the issuance of these shares may be regarded as additional underwriting commission.

The Class B Non-voting Common Stock offered herein may be purchased from Batten and Company at its offices located at 1835 K Street, N.W., Washington, D. C. Telephone: STerling 3-3060.

OPTIONS AND WARRANTS

No options or warrants are presently outstanding nor are any such options or warrants proposed to be granted to purchase the securities of the issuer.

LEGAL OPINION

The legality of the stock offered for sale to the public hereby has been passed upon for the corporation by its general counsel, B. Guerry Moore, Esq., 1025 Connecticut Avenue, Washington 6, D. C.

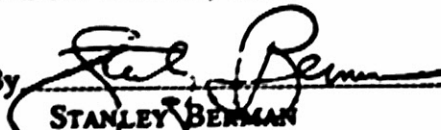
LITIGATION

No litigation involving any substantial amount is pending against the corporation, nor its predecessor in interest, Stanley Berman, nor to the knowledge of the corporation or of Stanley Berman, is any action contemplated; however, some of the current accounts payable have been owed for some time and approximately \$3,500 worth of these current liabilities have been placed in the hands of attorneys. Stanley Berman has been assured that he will be allowed a reasonable length of time to liquidate these accounts and part of the proceeds of this issue are earmarked therefor.

FINANCIAL STATEMENT

Financial statements annexed hereto. These financial statements have been prepared in large part from the tax records of Stanley Berman, T/A Light House. They are unaudited, but have been prepared in accordance with generally accepted accounting principles.

SABER BOATS, INC.

By 
STANLEY BERMAN
President

J. Ex. 6

Stanley Berman(1)
T/A LIGHT HOUSE
Balance Sheet
January 8, 1960

ASSETS

CURRENT ASSETS:

Cash on Hand and in Banks		\$ 2,154.00	
Accounts Receivable—Trade (2)		3,961.00	
Inventory: (3)			
Work in Process	\$ 475.00		
Parts and Accessories	2,010.32		
Motors—New and Used	9,415.00		
Finished Boats	5,765.00		
Trailers	155.00		
		<u>17,820.32</u>	
Total Current Assets			\$23,935.32

FIXED ASSETS:

Land		4,000.00	
Building (Cost)	\$25,500.00		
Less Reserve for Depreciation	<u>—3,075.00</u>		
		22,425.00	
Tools and Equipment (Cost)	2,027.00		
Less Reserve for Depreciation	<u>—480.00</u>		
		<u>1,547.00</u>	
Total Fixed Assets			\$27,972.00

OTHER ASSETS:

Jigs and Patterns (4)		15,297.37	
Total Other Assets			\$15,297.37
TOTAL ASSETS			<u>\$67,204.69</u>

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J. Ex. 6

LIABILITIES**CURRENT LIABILITIES:**

Accounts Payable—Trade (11)_____		\$ 6,274.65	
Loans Payable—Others_____		3,500.00	
Payroll_____		350.00	
Accrued and Withheld Payroll Taxes_____		3,700.00	
Wage—Hour Assessment_____		2,400.00	
Notes Payable to Banks:			
Secured (5)_____	\$ 6,500.00		
Unsecured (6)_____	9,000.00		
		15,500.00	
Notes Payable to Others:			
Secured (7)_____	2,500.00		
Unsecured (8)_____	1,650.00		
		4,150.00	
Mortgage Payable (portion due within one year from date)_____		\$ 1,296.00	
Total Current Liabilities_____			\$37,170.65

LONG-TERM LIABILITIES:

Notes Payable due more than one year from date (10)_____		13,650.00	
Mortgage Payable (portion due more than one year from date) (13)_____		9,354.00	
Total Long-Term Liabilities_____			23,004.00
TOTAL LIABILITIES _____			\$60,174.65

STOCKHOLDERS EQUITY:

Capital Stock—Class A (10¢ par value)			
Authorized — 100,000 shares			
Unissued — 72,000 shares			
Outstanding — 27,500 shares_____		2,750.00	
Capital Stock—Class B (10¢ par value)			
Authorized — 300,000 shares			
Unissued — 282,000 shares			
Outstanding — 18,000 shares_____		1,800.00	
Total Issued and Outstanding_____		4,550.00	
Paid-In Surplus_____		2,480.04	
Total Stockholders Equity (12)_____			7,030.04
TOTAL LIABILITIES AND NET WORTH _____			\$67,204.69

INVENTORY OF MACHINES & EQUIPMENT

	<u>Cost</u>
Delta Circ. Saw with motor.....	\$ 129.00
Elgin Bank Saw with motor.....	135.00
Used Dunlop Planer with motor.....	55.00
B & D 9" Portable Saw.....	100.00
Skil Belt Sander.....	100.00
2-B & D Osc. Sanders.....	75.00
8-B & D Drills.....	145.00
2-B & D Jig Saws.....	90.00
Elgin Portable Disc. Sander.....	25.00
Evinrude Outboard Test Tank.....	85.00
Lg. Spec. Outboard Test Tank.....	125.00
Evinrude Outboard Testing Equipment & Spc. Hand Tools.....	600.00
14-Outboard Motor Stands.....	88.00
Desk.....	25.00
1950 Ford Auto (used 100% for pick-up and delivery).....	250.00
Total.....	<u>\$2,027.00</u>

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J. Ex. 6

Stanley Berman (1)
T/A LIGHT HOUSE
COMPARATIVE STATEMENT OF PROFIT AND LOSS
(Unaudited)

	1-1-57 to 12-31-57	1-1-58 to 12-31-58	1-1-59 to 12-31-59
GROSS SALES	\$23,770.00	\$76,145.27	\$129,761.05
COST OF SALES:			
Inventory beginning of period	2,941.00	11,540.18	7,925.40
Purchases of Merchandise	13,476.60	52,474.24	59,598.05
Materials and Supplies	2,362.14	516.00	33,930.34
Manufacturing Labor (9)	9,258.65	12,668.37	19,997.74
Jigs and Patterns			630.00
Total	28,038.39	77,198.77	122,081.53
Inventory end of Period	11,540.16	7,925.40	17,820.32
Cost of Goods Sold	16,498.23	69,273.37	104,261.21
GROSS PROFIT	7,271.77	6,871.90	25,499.84
EXPENSES:			
Advertising	1,146.70	1,217.38	2,851.49
Auto Expenses	490.00	392.00	96.33
Depreciation	990.00	990.00	1,150.00
Electric	263.18	349.56	508.54
Heat		150.00	191.49
Insurance	692.05	764.00	247.71
Interest and Bank Charges	580.55	500.45	1,046.78
Legal Fees	85.00	25.00	30.00
Licenses and Taxes	74.55	124.75	99.88
Repair and Maintenance			189.71
Stationery			12.50
Telephone		184.20	790.22
Uniforms and Rags			74.16
Wages and Salaries	1,896.35	2,594.73	4,199.00
Total Expenses	6,218.38	7,282.07	11,978.15
NET PROFIT BEFORE TAXES	\$ 1,053.39	\$ (410.17)	\$13,521.69
Officers' Salaries which may be considered as applying if the business had been a corporation in these years assuming these salaries to be on the same basis as projected salaries for the year 1960	7,500.00	7,500.00	10,000.00
PRO FORMA PROFIT OR LOSS	(6,446.61)	(7,910.17)	3,521.69
CORPORATION TAXES	— 0 —	— 0 —	\$1,056.51
	(\$6,446.61)	(\$7,910.17)	(\$2,465.18)

J. Ex. 6

NOTES

1. Stanley Berman, on January 8, 1960, transferred these assets subject to liabilities stated on Pages 12 and 13 to Light House, Inc. in exchange for 12,500 shares of the corporation's Class A Voting Common Stock. Effective simultaneously with that transfer, this balance sheet is that of the corporation. On February 1, 1960, Light House, Inc. changed its name to Saber Boats, Inc. There is no earned surplus as the profit or loss from all preceding years was paid to Mr. Berman as a salary. The corporation is not assuming any liability of Stanley Berman for any personal tax liability.
2. All receivables are current, good and collectible and no reserve for doubtful receivables is deemed necessary.
3. New boats included in inventory were priced at cost. Used boats were priced at trade-in value or market value, whichever was lower. Motors and parts were priced at cost or market, whichever was lower, on a first-in, first out basis. Work in process is carried at cost of materials and labor.
4. Unrecovered costs to set up equipment for mass production. The figure of \$15,297.37 represents the cost of materials and labor, none of which represent services for which stock was issued. This item will be amortized over the first boats produced by charging each boat \$10.00 for jigs and patterns costs. In years prior to 1959, all expenditures for jigs and patterns were charged directly to expense.
5. Loan from the Bank of Maryland secured by chattel mortgage on motors and accessories, at 6% interest, due on March 30, 1960.
6. Note from the Bank of Maryland, unsecured, payable at 6% interest, due on March 30, 1960.
7. Note to Marshall R. Diggs and B. Guerry Moore, due on May 1, 1960. This note carries no interest and one of the payees is a Director of the corporation. Note was given in exchange for a loan of \$2,500.00, and is secured by a chattel mortgage of finished boats.
8. An unsecured note carrying no interest which represents refund due customer on boat.
9. Manufacturing labor breakdown is available for 1959, but not for preceding years. Wages and salaries are allocated to manufacturing in previous years on this same ratio as 1959.
10. Long-term notes as follows:

<i>Due Officers, Directors or Affiliates</i>	<i>Amount</i>	<i>Interest Rate</i>	<i>Date Due</i>
Andrew Hooker	\$5,000.00	6%	March 31, 1961
Rose Berman	3,700.00	none	June 30, 1961
Lily Hutt	2,450.00	none	June 30, 1961
<i>Due Others</i>			
William Woskie	2,500.00	none	June 30, 1961

11. See also Paragraph headed "Litigation" on Page 12.
12. All stock was issued at one time for net assets and services, and no asset account was charged for any of the services.
13. Mortgage is payable on the 13th of each month at the rate of \$108.00 per month until paid. Mortgage carries 6% interest.

No person is authorized by the Corporation or any Underwriter to give any information or to make any representations, other than those contained in this Offering Circular, in connection with the offer contained in this Offering Circular. This Offering Circular does not constitute an offering in any jurisdiction in which such offering may not lawfully be made.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMMON STOCK OF THE CORPORATION OFFERED HEREBY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THERE IS NO PRESENT MARKET FOR THE COMMON STOCK OF THE ISSUER.

1861 8-7587-1
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J. Ex. 7
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

NOV 21 1960

NOV 21 1960
812925
812929
812930

REG. NO.

In the Matter of

BATTEN & CO., INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-7887

MUTUAL FUNDS OF AMERICA, INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-6560

ORDER FOR PUBLIC PROCEEDINGS
PURSUANT TO SECTIONS 15(b)
AND 15A OF THE SECURITIES
EXCHANGE ACT OF 1934

I

The Commission's public official files disclose that:

A. Batten & Co., Inc., a District of Columbia corporation, hereinafter sometimes referred to as registrant, became registered with this Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act (Exchange Act) on October 23, 1959 and is still so registered.

B. Frank L. Batten (Batten), also known as Franklin L. Batten, is president, treasurer, director and the owner of 99% of the common stock of registrant.

C. Mutual Funds of America, Inc., a Maryland corporation, hereinafter sometimes referred to as Mutual, became registered with this Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act on May 30, 1958 and is still so registered.

D. Batten is president, treasurer, director, and the owner of 90.9% of the common stock and of 100% of the preferred stock of Mutual.

E. Registrant and Mutual are members of the National Association of Securities Dealers, Inc., a national securities association registered pursuant to Section 15A of the Exchange Act.

J. Ex. 7

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II

Members of its staff have reported to the Commission information obtained as a result of investigation which tends to show that:

A. On January 22, 1960, Light House, Inc., a Maryland corporation, filed a Letter of Notification and an offering circular with the Commission pursuant to Regulation A under the Securities Act of 1933 covering a public offering of 106,875 shares of Class B non-voting and 2,500 shares of Class A voting stock. By subsequent amendments the name of the issuer was changed to Saber Boat, Inc. (Saber), registrant was named the sole underwriter, and an offering price of \$2.00 per share was placed on the Class B non-voting shares. The offering circular used in connection with such offering stated that 102,000 shares of the Class B non-voting stock would be offered to the public by registrant at the offering price of \$2.00 per share and that 4,875 shares of Class B non-voting stock and the 2,500 shares of Class A voting stock would be offered at the market for the benefit of the underwriter. A report of sales under Regulation A was filed with the Commission by Saber and registrant on May 12, 1960, stating that the 106,875 shares of Class B common stock had been sold and the 2,500 shares of Class A stock had been placed in escrow and the offering to the public had been completed on May 2, 1960.

In fact, however, registrant prior to May 2, 1960 and beginning as early as March 25, 1960 placed a substantial portion of the offering of the Class B non-voting stock in accounts controlled and dominated by registrant and/or Batten.

On or after May 9, 1960, registrant bid for and purchased for its own trading account a large portion of the said shares from the aforementioned controlled and dominated accounts and until about June 30, 1960 distributed them to the public at prices in excess of the public offering price stated in said Letter of Notification and offering circular.

B. During the period from about March 25, 1960 to about May 2, 1960, registrant made in the offer and sale of the Class B non-voting stock of Saber untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, by delivering the offering circular described in paragraph A above which misrepresented the public offering price for such stock, failed to disclose the actual plan of distribution and the marketing arrangements for such offering, and misrepresented the company's total assets.

C. During the period from about May 2, 1960 to about June 30, 1960, registrant, while engaged in the distribution of shares of the Class B non-voting stock of Saber described in paragraph A above, solicited and induced certain persons to purchase and offered to sell and sold to such persons shares of such stock, and in connection therewith failed to disclose to such persons the actual plan of distribution and marketing arrangements for such offering, represented to such purchasers that such offering had been completed, when in fact registrant continued actively to engage in the distribution of such stock, represented that registrant was selling shares of common stock of Saber "at the market", when in fact registrant well knew and omitted to state that the prices paid by such persons for such stock were not prices established by a free, open and competitive market but were prices artificially established by registrant through the activities described in paragraph A above.

D. During the period from about February 25, 1960 to about June 30, 1960, registrant and Batten directly and indirectly made use of the means and instruments of transportation and communication in interstate commerce and of the mails to offer to sell and to sell the common stock of Saber when no registration statement had been filed with the Commission or was in effect as to such securities under the Securities Act of 1933.

E. Registrant and Batten engaged, and Batten caused registrant to engage, in certain of the activities hereinabove described in paragraphs A, B, C and D of Section II hereof.

F. Registrant and Batten directly and indirectly used, and Batten caused registrant to use, directly or indirectly, the mails and the means and instrumentalities of interstate commerce and the means and instruments of transportation and communication in interstate commerce in effecting transactions in and in the purchase and sale of and in the offer of securities, as hereinabove set forth in paragraphs A, B and C of Section II hereof.

G. Registrant effected, and Batten caused registrant to effect, otherwise than on a national securities exchange, certain of the transactions mentioned in paragraphs A, B and C of Section II hereof.

H. During the period from about May 2, 1960 to about June 30, 1960, registrant, while engaged as underwriter in the distribution of shares of the Class B non-voting stock of Saber, directly and indirectly used the mails and means and instrumentalities of interstate commerce to bid for and purchase shares of such stock for registrant's own account and Batten caused registrant to engage in these activities.

I. During the period from about March 25, 1960 to June 30, 1960, registrant made, and Batten caused registrant to make, entries in registrant's books and records which were false as to the nature of certain transactions in customers' accounts.

III

The information reported to the Commission by members of its staff as set forth in Section II hereof tends, if true, to show that:

A. Registrant and Batten wilfully violated Section 5(a) and (c) of the Securities Act of 1933 in that they, directly and indirectly, made use of the mails and the means and instruments of transportation and communication in interstate commerce to sell and to offer to sell the Class B non-voting stock of Saber when no registration statement had been filed or was in effect as to such security.

B. Registrant and Batten wilfully violated Section 17(a) of the Securities Act of 1933 in that, in the offer and sale of securities by use of means and instruments of transportation and communication in interstate commerce, and of the mails, registrant and Batten employed devices, schemes and artifices to defraud; obtained money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in transactions, practices and a course of business which would and did operate as a fraud and deceit upon the purchasers.

C. Registrant and Batten wilfully violated Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-5 prescribed by the Commission under said section, in that registrant and Batten, directly and indirectly, by the use of the mails and the means and instrumentalities of interstate commerce, in connection with the purchase and sale of securities, employed devices, schemes and artifices to defraud; made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in acts, practices and a course of business which would and did operate as a fraud and deceit upon certain persons.

D. Registrant wilfully violated Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-6 prescribed by the Commission under said section in that registrant, directly or indirectly, by use of the mails and the means and instrumentalities of interstate commerce, employed manipulative, deceptive and other fraudulent devices and contrivances as defined by Rule 17 CFR 240.10b-6, and Batten aided, abetted, counseled, commanded, induced and procured such violations.

E. Registrant wilfully violated Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240.15c1-2 prescribed by the Commission under said section in that registrant made use of the mails and the means and instrumentalities of interstate commerce to effect transactions in and to induce the purchase and sale of securities, otherwise than on a national securities exchange, by means of manipulative, deceptive and other fraudulent devices and contrivances as defined by Rule 17 CFR 240.15c1-2, and Batten aided, abetted, counseled, commanded, induced and procured such violations.

F. Registrant wilfully violated Section 17(a) of the Exchange Act and Rule 17 CFR 240.17a-3 prescribed by the Commission under said section in that registrant made certain false entries in certain of the books and records relating to its business required to be made and kept current by said rule, and Batten aided, abetted, counseled, commanded, induced and procured such violations.

IV

The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that public proceedings be instituted to determine:

- (a) whether the statements set forth in Section II hereof are true;
- (b) whether registrant and Batten, or either of them, wilfully violated Section 5(a) and (c) of the Securities Act of 1933;
- (c) whether registrant and Batten, or either of them, wilfully violated Section 17(a) of the Securities Act of 1933;
- (d) whether registrant and Batten, or either of them, wilfully violated Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-5 thereunder;
- (e) whether registrant and Batten, or either of them, wilfully violated Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-6 thereunder;
- (f) whether registrant and Batten, or either of them, wilfully violated Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240.15c1-2 thereunder;
- (g) whether registrant and Batten, or either of them, wilfully violated Section 17(a) of the Exchange Act and Rule 17 CFR 240.17a-3 thereunder;
- (h) whether, pursuant to Section 15(b) of the Exchange Act, it is in the public interest to revoke the registration of registrant;
- (i) whether, pursuant to Section 15(b) of the Exchange Act, pending final determination of the question of revocation, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant;
- (j) whether, pursuant to Section 15A(1)(2) of the Exchange Act, it is necessary or appropriate in the public interest

or for the protection of investors, or to carry out the purposes of said section, to suspend for a period not exceeding 12 months, or to expel the registrant from membership in the National Association of Securities Dealers, Inc.;

- (k) whether, pursuant to Section 15(b) of the Exchange Act, it is in the public interest to revoke the registration of Mutual;
- (l) whether, pursuant to Section 15(b) of the Exchange Act, pending final determination of the question of revocation, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of Mutual;
- (m) whether, pursuant to Section 15A(1)(2) of the Exchange Act, it is necessary or appropriate in the public interest or for the protection of investors, or to carry out the purposes of said section, to suspend for a period not exceeding 12 months, or to expel Mutual from membership in the National Association of Securities Dealers, Inc.; and
- (n) whether, within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission should find that Frank L. Batten, also known as Franklin L. Batten, is a cause of any order of revocation, suspension or expulsion which may be entered pursuant to paragraphs (h), (j), (k) and (m) of Section IV hereof.

V

IT IS ORDERED that a public hearing be held before Irving Schiller, Hearing Examiner, or such other hearing examiner as the Commission may designate, at 10:00 A.M. on November 28, 1960, at the Securities and Exchange Commission, 425 Second Street, N. W., Washington 25, D. C., on the questions set forth in paragraphs (i) and (1) of Section IV hereof. Upon the completion of the taking of evidence on such questions, proposed findings and conclusions and briefs in support thereof may be filed, the hearing examiner shall prepare a recommended decision, unless waived, and exceptions thereto and briefs in support thereof may be filed, all as provided by Rule 19 of the Commission's Rules of Practice. The Commission will then take the matter under advisement and issue its findings and opinion on such questions.

IT IS FURTHER ORDERED that immediately following the conclusion of the hearing on the questions set forth in paragraphs (i) and (1) of Section IV hereof, a further hearing be held before the said hearing examiner on the other questions set forth in Section IV hereof.

J. Ex. 7

- 7 -

IT IS FURTHER ORDERED that the record made in the hearing on the questions set forth in paragraphs (i) and (1) of Section IV hereof shall be incorporated into and made a part of the record in this latter hearing.

This order shall be served on registrant and Frank L. Batten personally or by registered mail forthwith.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule-making" within the meaning of Section 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that section delaying the effective date of any final Commission action.

By the Commission.

Orval L. DuBois
Secretary


By Nellys A. Thorsen
Assistant Secretary



J. Ex. 7

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON 25, D. C.

NOV 21 1960

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Frank L. Batten
1835 K Street, N. W.
Washington, D. C.

NOV 21 1960
312927
312928
REG. NO. 312929

In the Matter of Batten & Co., Inc.
and Mutual Funds of America, Inc.

Dear Mr. Batten:

Please take notice that the enclosed order involves, among other things, a question of whether you are a cause of any order which may be entered in the above matter. Your attention is directed to the fact that the findings of the Commission herein may be binding on you in future proceedings under the Securities Exchange Act of 1934 and the Securities Act of 1933, as well as in the present proceedings.

Rule 17 CFR 240.15b-9 prescribed under the Securities Exchange Act of 1934 provides that an individual in your position "is entitled to participate as a party." It provides further:

"If he participates generally in the proceeding or files a notice of appearance, he shall be deemed a party of record and will be given notices of intermediate developments in the proceeding. In any event he may inform himself of such developments by attendance at the hearings or examination of the record (whether the proceedings be public or private) or by arrangement with a party of record, so that he can determine whether he desires to be heard at any time."

Very truly yours,

MLaprade/bc

Enclosure

cc: Mr. Frank L. Batten
1414 - 17th Street, N. W.
Washington, D. C.
Mr. Frank L. Batten
810 - 18th Street, N. W.
Washington, D. C.

Orval L. DuBois
Secretary

By Hollye A. Thorsen
Assistant Secretary

572823

cc: Washington RO

1869 9-7887-1
43 Ex.

J. Ex. 7
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

NOV 23 1960

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

NOV 23 1960
812995
812999
812500

REG. NO.

In the Matter of

BATTEN & CO., INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-7887

MUTUAL FUNDS OF AMERICA, INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-6560

AMENDING ORDER

The Commission having, on November 21, 1960, issued an order for public proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 in the above matter;

IT IS ORDERED that the fourth paragraph of Section V of said order be amended by adding the name of Mutual Funds of America, Inc. so that said paragraph will read:

"This order shall be served on Batten & Co., Inc., Mutual Funds of America, Inc. and Frank L. Batten personally or by registered mail forthwith."

This amending order shall be served on Batten & Co., Inc., Mutual Funds of America, Inc. and Frank L. Batten personally or by registered mail forthwith.

By the Commission.

Orval L. DuBois
Secretary

By *Nelly A. Thorsen*
Nelly A. Thorsen
Assistant Secretary

1784

SECURITIES AND EXCHANGE COMMISSION

No. 1784

Communications
Applicant

57 44 Ex.

J. Ex. 7

(For JOINT) EX. #7

In the Matter of

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of

BATTEN & CO., INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-7887

MUTUAL FUNDS OF AMERICA, INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-6560

AMENDMENT TO ORDER FOR PUBLIC
PROCEEDINGS PURSUANT TO SECTIONS
15(b) AND 15A OF THE SECURITIES
EXCHANGE ACT OF 1934

On March 13 and 14, 1961, motions were made by the Division of Trading and Exchanges to amend the Order for Proceedings, pursuant to Rule 6(d) of the Rules of Practice and said motions were granted, and the Order for Proceedings was amended to read as follows:

II

Members of its staff have reported to the Commission information obtained as a result of investigation which tends to show that:

A. On January 22, 1960, Light House, Inc., a Maryland corporation, filed a Letter of Notification and an offering circular with the Commission pursuant to Regulation A under the Securities Act of 1933 covering a public offering of 106,875 shares of Class B non-voting and 2,500 shares of Class A voting stock. By subsequent amendments the name of the issuer was changed to Saber Boat, Inc. (Saber), registrant was named the sole underwriter, and an offering price of \$2.00 per share was placed on the Class B non-voting shares. The offering circular used in connection with such offering stated that 102,000 shares of the Class B non-voting stock would be offered to the public by registrant at the offering price of \$2.00 per share and that 4,875 shares of Class B non-voting stock and the 2,500 shares of Class A voting stock would be offered at the market for the benefit of the underwriter. A report of sales under Regulation A was filed with the Commission by Saber and registrant on May 12, 1960, stating that the 106,875 shares of Class B common stock had been sold and the 2,500 shares of Class A stock had been placed in escrow and the offering to the public had been completed on May 12, 1960.

In fact, however, registrant prior to May 2, 1960 and beginning as early as March 25, 1960, placed a substantial portion of the offering of the Class B non-voting stock by means of false and fictitious entries in customers' accounts and in accounts controlled and dominated by registrant and/or Batten.

On or after May 2, 1960, registrant bid for and purchased for its own trading account a large portion of the said shares from the aforementioned accounts containing false and fictitious entries, and controlled and dominated accounts, and until about June 30, 1960, distributed them to the public at prices in excess of the public offering price stated in said Letter of Notification and offering circular.

On and after May 3, 1960, registrant inserted bid and offer listings in the sheets of the National Daily Quotation Service in Saber Boat Class B non-voting stock and on several days alone, or with one or more other dealers, its bid was high and had been raised above the high bid of the previous day by any dealer.

Registrant also during the period May 2, 1960 to June 15, 1960, purchased, as principal, shares of Saber Boat Class B non-voting stock at successively higher prices from other dealers and also purchased shares of such stock from other dealers acting as agent for certain of its customers in such transactions.

J. Ex. 8

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

8-7887-1

orig

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46 Ex.

FILED

DEC - 3 1960

In the Matter of

Batten & Company, Inc.
1935 K Street, N. W.
Washington, D. C.

File No. 8-7887

Mutual Funds of America, Inc.
1935 K Street, N. W.
Washington, D. C.

File No. 8-6560

D M & F SECTION
SECURITIES & EXCHANGE COMMISSION

STIPULATION

AGREEMENT AND CONSENT

The Commission having instituted a proceeding in the above matter pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934, as amended, by an order dated November 21, 1960 and the parties hereto and their respective attorneys having agreed to stipulate as to certain facts solely for the purpose of these proceedings, do hereby state and declare as follows:

1. Batten & Company, Inc. and Mutual Funds of America, Inc., hereinafter referred to as registrants, are corporations, and Frank L. Batten, also known as Franklin L. Batten, is president, treasurer, director and owner of 99% of the common stock of Batten & Company, Inc. and is president, treasurer, director and the owner of 90.9% of the common stock and 100% of the preferred stock of Mutual Funds of America, Inc. and is in control of registrants.

2. Batten & Company, Inc. has been registered as a broker-dealer in securities pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended, since October 23, 1959 and Mutual Funds of America, Inc. has been registered as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended, since May 30, 1958, and both are still so registered.

J. Ex. 8

- 2 -

3. Registrants and Frank L. Batten hereby acknowledge receipt and service of the Commission's notice and order in these proceedings which have been heretofore referred to.

4. The Commission's order originally set November 23, 1960 as the date for a public hearing to be held to consider the suspension of the registrants' registrations as brokers and dealers. At the request of Franklin L. Batten the hearing was postponed to December 5, 1960 by the Commission. This extension was to enable Franklin L. Batten to obtain suitable counsel.

5. Registrants and Franklin L. Batten hereby stipulate and agree and consent that there have been probable violations of Sections 5(a) and 5(c) of the Securities Act of 1933, as amended, and 17(a) of the Securities Exchange Act of 1934, as amended.

6. Registrants and Franklin L. Batten hereby stipulate and agree that it is within the public interest to suspend the registrations of the registrants as brokers and dealers pending the determination of the revocation proceedings herein described by the Commission and that the Commission may enter an order forthwith without notice suspending the registrations of the registrants pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended, pending final determination of the proceedings herein to revoke the broker-dealer registrations of the registrants.

7. Registrants and Franklin L. Batten agree to waive their rights to a hearing herein, waive their rights to file proposed findings of fact and conclusions of law, also waive their rights to a recommended decision by Hearing Examiner, and waive all argument before the Commission and agree that any officer or employee of the Commission may participate or advise in the decision or preparation of the findings and opinion of the Commission in this matter.

8. Registrants and Franklin L. Batten hereby state, declare and represent that no promises of any kind or nature whatsoever were made to induce their entering into this stipulation and consent and declare and represent that they entered into this stipulation as a voluntary act on their part.

9. Registrants and Franklin L. Batten and their Counsel, Thomas S. Sullivan, and the Counsel for the Division of Trading and Exchanges, hereby stipulate and request that the hearing for revocation of the registrants be set for Monday, January 16, 1961, at 10:00 a.m., subject to the approval of the Commission.

BATTEN & COMPANY

Franklin L. Batten
Franklin L. Batten, President

MUTUAL FUNDS OF AMERICA, INC.

Franklin L. Batten
Franklin L. Batten, President

Franklin L. Batten
Franklin L. Batten

Thomas S. Sullivan
Thomas S. Sullivan
Attorney for Registrants and
Franklin L. Batten

W. F. Crow
W. F. Crow

Alexander J. Brown, Jr.
Alexander J. Brown, Jr.

December 2, 1960

C. D. Ward
C. D. Ward

Counsel for
Division of Trading and Exchanges

(Securities Act Release No. 4558)

J. Ex. 9

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
November 28, 1962

In the Matter of	:	
SABER BOATS, INC.	:	ORDER PERMANENTLY
File No. 24W-2344	:	SUSPENDING EXEMPTION
	:	UNDER REGULATION A
Securities Act of 1933 -	:	
Section 3(b) and Regulation A	:	

Saber Boats, Inc. (formerly Light House, Inc.), a Maryland corporation, filed with the Commission a notification on Form 1-A and an offering circular for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933 pursuant to Section 3(b) thereof and Regulation A thereunder, with respect to a proposed public offering of 2,500 shares of Class A voting common stock, par value 10¢, and 106,875 shares of Class B non-voting common stock, par value 10¢, at an offering price of \$2 per share.

The Commission, by order dated November 25, 1960, temporarily suspended the aforesaid exemption pursuant to Rule 261(a) of Regulation A, and a hearing was held, at the issuer's request, to determine whether to vacate the order of temporary suspension or to enter an order permanently suspending the exemption.

Thereafter, proposed findings and conclusions and a brief were submitted by the Division of Trading and Exchanges of the Commission, but none were filed by the issuer. The hearing examiner submitted a recommended decision in which he recommended that the Regulation A exemption be permanently suspended, finding that the offering circular contained untrue and misleading statements concerning the lack of full legal title of the issuer to the property of which it claimed ownership, and the method of distribution and the prices at which the stock would be offered to the public; that the report of completion of distribution filed with the Commission was incorrect and misleading; that certain sales were made without use of an offering circular; and that the offering was made in violation of the anti-fraud provisions of the securities acts. The issuer has not filed exceptions to the recommended decision of the hearing examiner.

In view of the foregoing, the Commission adopts the findings and conclusions of the hearing examiner.

Accordingly, IT IS ORDERED that, pursuant to Rule 261 of Regulation A under the Securities Act of 1933, the exemption from registration with respect to the above public offering by Saber Boats, Inc. be, and it hereby is, permanently suspended.

By the Commission.

(Entered on the date first noted above)

Orval L. DuBois
Secretary

J. Ex. 10

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Orig.
R/A

50 Ex.

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

June 26, 1963

Memorandum to: Office of Records and Service
Copies to: Parties to the Proceedings

Re: Batten & Company, Inc. (File 8-7887)
Mutual Funds of America, Inc. (File 8-6560)

The Commission considered a motion filed on June 7, 1963, by Batten & Company, Inc. (File 8-7887), Mutual Funds of America, Inc. (File 8-6560), and Franklin L. Batten, in which they requested that the Commission's order revoking the broker-dealer registrations of the corporate respondents and finding Batten a cause of the revocations (Securities Exchange Act Release No. 7086, May 29, 1963) be set aside and that further hearings be held. The Commission's Division of Trading and Exchanges opposed the motion.

In support of their motion movants asserted that the corporate respondents' consent to temporary suspension of their registrations pending the outcome of the revocation proceedings was obtained because respondents were not properly represented by their former counsel, who is now deceased, and they contended that respondents were therefore denied due process. The Commission considered that, regardless of whether or not that assertion was true, the temporary suspension had no bearing on the question whether issuance of an order of revocation was in the public interest and it did not give rise to any claim of lack of due process. It in no way impaired respondents' opportunity to defend themselves on the issues pertaining to revocation. Respondents had appropriate notice and a hearing on the revocation issues, after which a recommended decision by the hearing examiner and exceptions and briefs were filed, and the Commission heard oral argument and issued its findings and opinion based solely on the record in the revocation proceedings.

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

JUN 27 1963

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REG. NO.

811888

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

JUN 26 1963

811834

REG. NO.

J. Ex. 10

- 2 -

In further support of their motion, movants renewed their objections to various findings in the Commission's opinion, contending that the distribution of Saber Boats, Inc. stock by Batten & Company, Inc. ended at the date previously alleged by respondents and that revocation of corporate respondents' registrations was not in the public interest. These contentions were made previously during the proceedings and the Commission noted that it had considered and rejected them when it issued its findings and opinion.

Accordingly, respondents' motion was denied.

Commissioner Cohen did not participate in the above matter.

Orval L. DuBois
Orval L. DuBois
Secretary

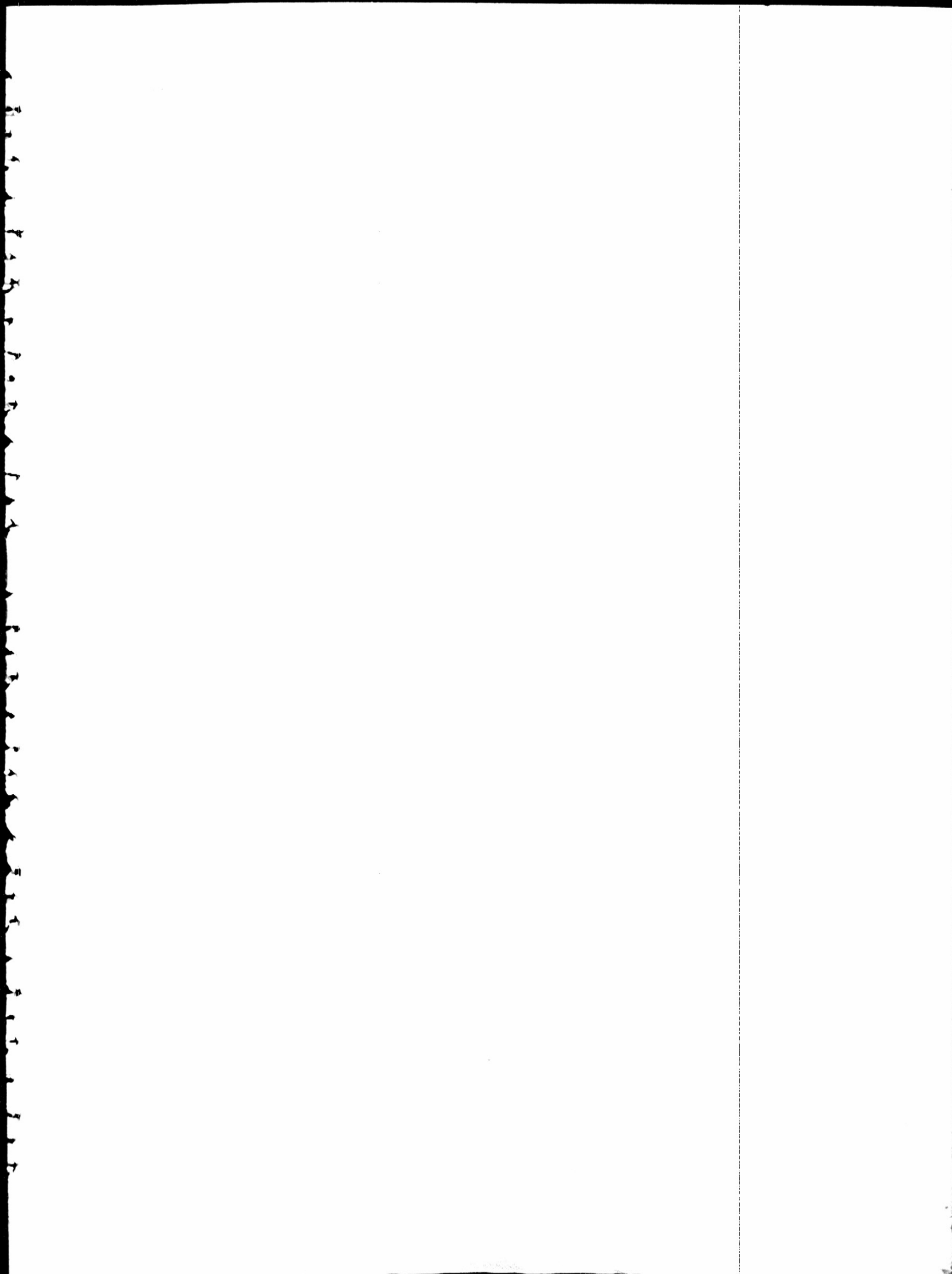
Barrett, Co
 Daily position in stock of *Safar* 1000 shares as shown by trading slip
 May 1, 1960 through June 30, 1960

Date 1960	Bought	Sold	Price	Long	Net Short
5-1	No Position				
5-2	100		2	100	
5-3		50	2 1/4		
5-3		50	2 5/8		
5-4	4750		2 -		
5-4	1000		2 1/4	5750	
5-5		100	2 7/8		
5-5		1000	2 5/8	4650	
5-6		200	2 5/8	4450	
5-9	100		2 1/4	4550	
5-12		1500	2 13/16		
5-12		2000	2 7/8		
5-12		100	3 -	950	
5-16	600		2 5/8	1550	
5-19	100		2 3/4	1650	
5-20		20	3 1/4		
5-20		500	3 1/2		
5-20	2005		2 3/4	5135	
5-24	75		3 -		
5-24	200		3 1/8		
5-24		300	2 5/8		
5-24		280	3 3/4	2830	
5-25	175		2 1/4	3005	
5-26	50		3 -		
5-26		150	3 3/4		
5-26		50	3 7/8	2655	
5-27		100	3 3/4		
5-27		1340	4	1415	
5-31	200		4 1/4		
5-31	100		4		
5-31	100		4 3/4		
5-31		1375	4 1/2		
5-31		50	4 3/4		
5-31		650	5 -		
5-31		340	5 1/8		600
5-31		350	5 1/4		950
6-1			4 1/2		
6-2	100		4 1/4		
6-2	150		4		
6-2	325				
6-2		100	4 1/4		
6-2		470	5 1/2		915
6-3		25	5 1/4		
6-3		315	5 1/2		1315
	16130	11445			

J. Ex. 11

Date 1960	Bought	Sold	Price	Long	Short
Brought forward					1315
6-6	50 cr.		5 1/2		
6-6	100		4 3/4		
6-6	650		4 1/4		
6-6		700	5 1/2		1215
6-7	125		4 3/4		
6-7		100	5-		
6-7		300	5 1/2		1490
6-8	100		4 1/2		1390
6-9	200		4 1/4		
6-9	375		4 1/2		
6-9		650	5-		
6-9		400	5 1/4		
6-9		220	5 1/2		2055
6-10	1150		5		
6-10	100		4 1/2		
6-10	1000		4 1/2		
6-10		200	5 1/4		
6-10		447	5 1/2		
6-10		769	5 3/4		1691
6-13	150		5-		
6-13	350		4 3/4		
6-13	950		4 1/2		211
6-14	50		4 3/4		
6-14		125	5 1/2		
6-14		50	5 3/4		366
6-15	50		5 1/2		
6-15		50	5 1/2		
6-15		100	5 3/4		
6-15		50	5 1/2		
6-15		50	5 3/4		
6-15	25 cr.		5 1/2		541
6-16	250		5-		
6-16	300		4 1/2		
6-16		220	5 3/4		211
6-17		100	5 1/2		311
6-20	100		4 5/8		
6-20	50		4 1/8		
6-20	150		4 1/4		
6-20		250	5-		261
6-21		450	5-		
6-21	50		4 1/4		
6-21	700		4 5/8		461
	6525	5671			

Date 1960	Bought	Sold	Price	Long	Net Short
Brought Forward					461
6-22	200			4 1/4	
6-22		150		5 -	411
6-23	50			4 1/4	361
6-24	50			4 -	
6-24	50			4 1/4	
6-24		200		4 3/4	
6-27		25		5	486
6-27		100		4 1/4	
6-27		100		4 1/2	
6-27	100			3 3/4	
6-27	50			4 -	536
6-28		100		3 3/4	
6-28		75		4 1/4	
6-28	100			3 1/2	611
6-29	300			3 -	311
6-30	425			3 3/4	
6-30		100		3 3/4	16
Page 3	1325	880			
2	6525	5471			
1	10130	11445			
	17980	17996			
		17980			
		16			



①
Latten & Co.
Laber, Boate
 Purchaser AS PRINCIPAL

J. Ex. 12

7-28-60
 C. S. + R. W. H.

Trade Date	Customer	Shares	Price	Amount	
1960					
5-2	Latten & Co.	100	2	200-	
4	C. D. Latten 71-B Holly Ave, Richmond	100	2	200-	
4	J. E. Latten 71-D Ridge Road, Franklin	1000	2	2000-	
4	Alfred Latten 5810 Littleton St. S.W.	1000	2	2000-	
4	J. B. Latten 1000 11th St, N.W., Wash, D.C.	500	2	1000-	
4	William Latten	250	2	500-	
4	J. D. + A. Stanford	1000	2	2000-	
4	J. H. H. Wash	1000	2 1/8	2125-	
7	W. L. Latten & Co. ③	100	2 1/8	225-	
16	Capital Research ③	500	2 5/8	1312.50	
16	Stanley Allen ③	100	2 5/8	262.50	
19	Atlantic Equities Corp. ③	100	2 5/8	275-	
20	J. M. Latten & Co.	200	2 3/4	825-	
20	L. Latten	100	2 3/4	275-	
20	L. M. Latten	105	2 3/4	298.75	
20	J. Latten	500	2 3/4	1375-	
20	J. D. Latten	1000	2 3/4	2750-	
24	Jones, Latten & Co. ③	75	3	225-	
24	Jones, Latten & Co. ③	200	2 1/8	625-	
25	Jones, Latten & Co. ③	175	3 1/8	568.75	
26	J. H. Latten	50	3	150-	
31	D. E. Latten	100	4 1/2	450-	
31	William Latten	100	4 1/2	450-	
31	L. Latten	100	4	400-	
6-2	J. B. Latten	100	4 3/4	475-	
6-2	A. M. Latten	100	4 1/2	450-	
6	Jones Latten ③	150	4 1/4	637.50	
6	Capital Research ③	325	4	1300-	
6	J. Latten	50	4 1/2	225-	
6	M. E. Latten	50	4 3/4	237.22	
6	J. H. Latten	50	4 3/4	237.22	

H. D. Latten & Co. 1111 1st Ave, N.Y.
 1255 1st Ave, N.Y., D.C.

4-2-6

XLD

*Latter & Co.
Paper & Coats
Furniture*

J. Ex. 12

1537
56 Ex

7-2-60
E.L. + K7H2A

Trade Date	Customer	Share	Price	Account
1960				
6-6	Ferris Co. (C)	50 ✓	4 1/4	212.50
6-6	A. T. B. Brod-Co (C)	100 ✓	4 1/4	425.-
6-6	V. E. Briel	100 ✓	4 1/4	425.-
6-6	Jones, T. Kreeper (C)	200 ✓	4 1/4	850.-
6-6	W. F. Fairclaw	200 ✓	4 1/4	849.44
6-7	R. W. Barnes	25 ✓	4 3/4	118.51
6-7	G. M. Gisher	50 ✓	4 3/4	237.82
6-7	J. Wood	50 ✓	4 3/4	237.22
6-8	G. A. Julian	100 ✓	4 1/2	450.-
6-9	A. T. Brod-Co (C)	50 ✓	4 1/4	212.50
6-9	Jones, T. Kreeper (C)	150 ✓	4 1/4	637.50
6-9	W. F. Fairclaw	75 ✓	4 1/4	318.75
6-9	Andrew Allen (C)	100 ✓	4 1/2	450.-
6-9	T. J. McDonald	200 ✓	4 1/2	900.-
6-10	L. G. Brockman	200 ✓	5	999.40
6-10	Base Brewster Baker (C)	100 ✓	5	500.-
6-10	D. D. Dutton	100 ✓	5	499.60
6-10	C. F. Wierby	50 ✓	5	249.68
6-10	V. E. Briel	100 ✓	5	499.60
6-10	H. W. Bittling	100 ✓	5	499.60
6-10	J. P. Bradford, 100 shares, no. 5001	500 ✓	5	2498.80
6-10	Jones, T. Kreeper (C)	100 ✓	4 1/4	450.-
6-10	Jones, T. Kreeper (C)	100 ✓	4 1/4	450.-
6-10	C. D. Dutton	150 ✓	5	750.-
6-13	D. Justice	300 ✓	4 3/4	1422.74
6-13	R. W. Barnes	50 ✓	4 3/4	236.72
6-13	T. J. McDonald (C)	200 ✓	4 1/2	1125.-
6-13	Jones, T. Kreeper (C)	200 ✓	4 1/4	3150.-
6-14	J. P. Bradford	50 ✓	4 3/4	237.50
6-15	J. P. Bradford	100 ✓	5 1/4	2625.00
6-15	J. P. Bradford	100 ✓	5 1/4	2625.00
6-16	M. W. Hall	50 ✓	5	249.68
6-16	W. F. Fairclaw	100 ✓	5	499.10
6-16	D. D. Dutton	100 ✓	5	499.10
6-16	Jones, T. Kreeper (C)	200 ✓	4 1/2	900.-
6-16	W. F. Fairclaw, Darning	100 ✓	4 1/2	450.-
6-20	T. J. McDonald (C)	100 ✓	4 1/2	451.75
6-20	Ferris Co.	50 ✓	4 1/4	206.25
6-20	R. W. Barnes	150 ✓	4 1/4	637.50
6-21	J. P. Bradford	50 ✓	4 1/2	242.50
6-21	J. P. Bradford (C)	200 ✓	4 1/2	882.50
6-22	W. F. Fairclaw (C)	200 ✓	4 1/4	850.-
6-23	E. Conroy	50 ✓	4 1/4	218.50
6-24	F. L. Thomas	50 ✓	4	200.-
6-24	T. J. Phillips	100 ✓	4 1/4	212.50

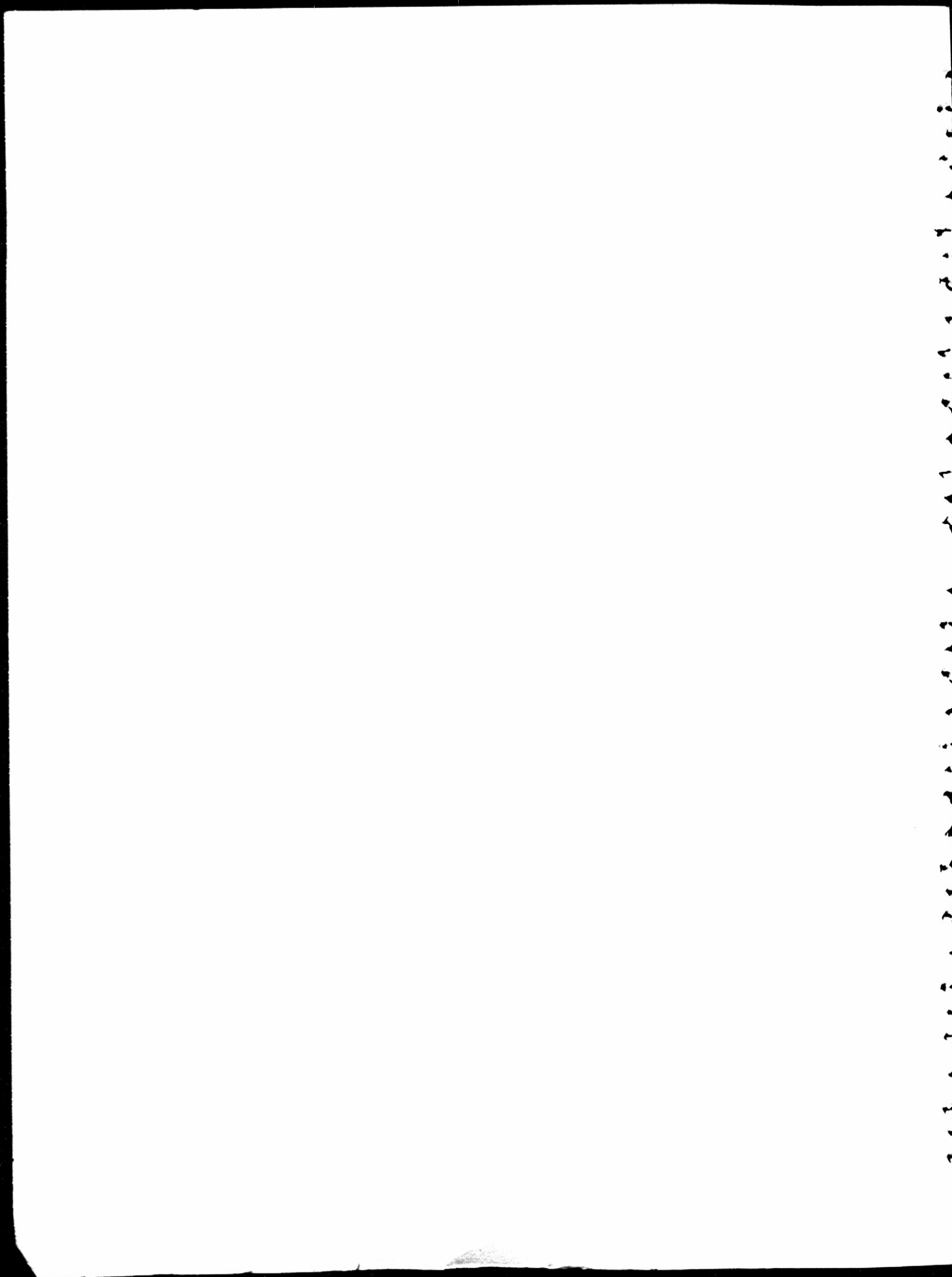
Batter & Company
Sales & Boats
Purchases

J. Ex. 17

7-28-60
E.B. + R.M.S.

Grade Date	Customer	Shew	Price	Amount
1-60	A. T. Prof. (B)	1000	3 3/4	395
6-27	J. W. Shure	50	4	200
6-27	E. R. W. Wagon	100	3 1/4	350
6-28	W. H. Wagon	100	3	300
6-29	Jones, W. Wagon (B)	200	3	600
6-29	P. F. Wagon	200	3 3/4	750
6-30	E. F. Wagon	50	3 3/4	187.50
6-30	E. F. Wagon	50	3 3/4	187.50
6-30	C. J. Wagon	100	3 3/4	375
6-30	D. Wagon	25	3 3/4	93.75
7-19	S. F. Wagon (B)	100	1/2	50
7-19	W. Wagon	100	1/2	43.75
7-19	W. Wagon	300	1/2	150
Page		3	140	
		2	6725	
		1	10250	
			18905	
Less July Purchase			425	
Bal. July 6/30/60			17780	
7-26	E. A. Wagon	100		
7-26	R. F. Wagon	4875		

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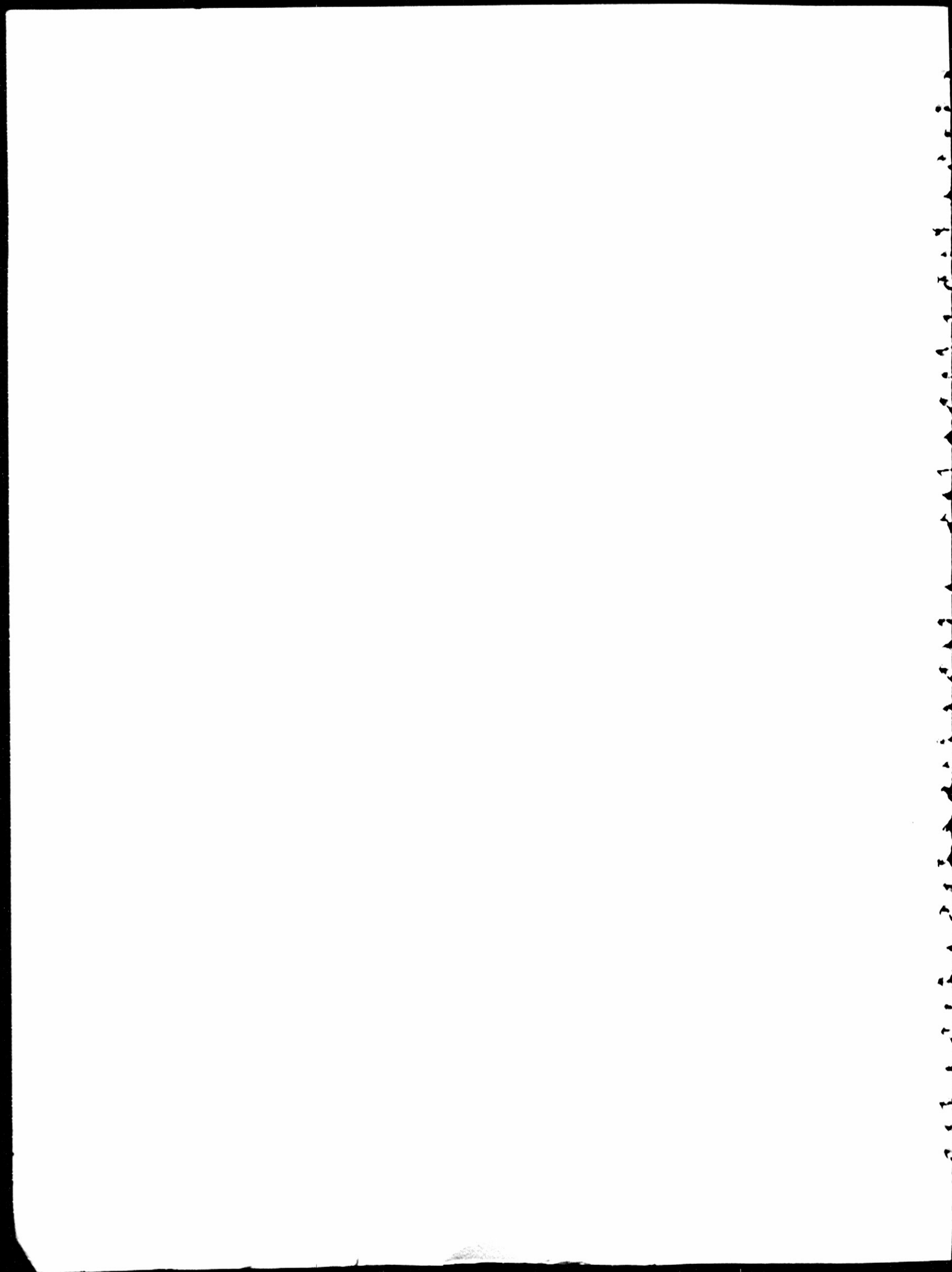


Schedule of High Bids in The National Daily
Quotation Sheets in Silver Boat, Inc. Stock
from May 3, to June 30, 1960.

Date 1960	Brokers	High Bid for 1 Sh.
5-4	Batten + Co.	5 $\frac{1}{4}$
5-6	R.P. + R.A. Miller	2 $\frac{1}{4}$
5-9	R.P. + R.A. Miller	2 $\frac{1}{4}$
	Batten + Co.	2 $\frac{1}{4}$
	T. J. Mc Donald	2 $\frac{1}{4}$
	Amer Dir Secs	2 $\frac{1}{4}$
5-12	Batten + Co.	2 $\frac{3}{4}$
	R.P. + R.A. Miller	2 $\frac{3}{4}$
	T. J. Mc Donald	2 $\frac{3}{4}$
	Amer. Dir. Secs.	2 $\frac{3}{4}$
5-13	Batten + Co.	2 $\frac{1}{2}$
	T. J. Mc Donald	2 $\frac{1}{2}$
5-16	T. J. Mc Donald	2 $\frac{3}{4}$
	Amer. Dir. Secs.	2 $\frac{3}{4}$
	Batten + Co.	2 $\frac{3}{4}$
5-17	R.P. + R.A. Miller	2 $\frac{1}{2}$
	Batten + Co.	2 $\frac{1}{2}$
5-18	T. J. Mc Donald	2 $\frac{3}{4}$
5-19	T. J. Mc Donald	2 $\frac{1}{2}$
5-20	R.P. + R.A. Miller	2 $\frac{1}{2}$
	Batten + Co.	2 $\frac{1}{2}$
5-24	Batten + Co.	3
5-27	T. J. Mc Donald	3 $\frac{1}{4}$
	Batten + Co.	3 $\frac{1}{4}$
5-31	T. J. Mc Donald	3 $\frac{7}{8}$
6-1	Batten + Co.	4 $\frac{1}{4}$
6-2	Batten + Co.	4 $\frac{1}{4}$
6-3	Batten + Co.	4 $\frac{1}{4}$
	R.P. + R.A. Miller	4 $\frac{1}{4}$
6-6	Batten + Co.	4 $\frac{1}{4}$
	T. J. Mc Donald	4 $\frac{1}{4}$
6-7	Batten + Co.	4 $\frac{1}{2}$
6-10	Batten + Co.	4 $\frac{1}{4}$
6-13	T. J. Mc Donald	4 $\frac{3}{4}$

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Date 1960	Broker	High Bids for the Day
6-14	Batten & Co.	4 $\frac{3}{4}$
6-15	Batten & Co.	4 $\frac{3}{4}$
6-17	T. J. McDonald	4 $\frac{1}{2}$
	Batten & Co.	4 $\frac{1}{2}$
6-20	Batten & Co.	4 $\frac{1}{2}$
6-21	Batten & Co.	4 $\frac{1}{2}$
6-22	T. J. McDonald	4 $\frac{1}{4}$
	R. P. & R. A. Miller	4 $\frac{1}{4}$
6-23	R. P. & R. A. Miller	4 $\frac{1}{2}$
	Batten & Co.	4 $\frac{1}{2}$
6-24	Batten & Co.	4 $\frac{1}{2}$
	R. P. & R. A. Miller	4 $\frac{1}{2}$
6-27	Batten & Co.	4
6-28	Batten & Co.	3 $\frac{1}{2}$
	R. P. & R. A. Miller	3 $\frac{1}{2}$
6-30	Batten & Co.	3 $\frac{1}{2}$

Total number of days Batten & Co. was in
the high group either alone or with others
25

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from the original bound volume

Date	Letter and Company	Subd Bonds	Class B - 700,000,000
12-30			
1-3	Batten & Co.	2 1/8	2 1/8
3	T. J. McDonald	2 1/8	2 1/8
3	Jones, Kreeger & Co.	2 1/8	2 1/8
3	R. P. & R. L. Miller	2 1/8	2 1/8
4	Batten & Co.	5 1/4	5 1/4
5		2 1/8	2 1/8
5	R. P. & R. L. Miller	2 1/8	2 1/8
5	T. J. McDonald	2 1/8	2 1/8
5	Amer Dir Secs	2 1/8	2 1/8
6	Batten & Co.	2 1/8	2 1/8
6	T. J. McDonald	2 1/8	2 1/8
6	Jones, Kreeger & Co.	2 1/8	2 1/8
6	R. P. & R. L. Miller	2 1/8	2 1/8
7	Sat		
8	Sun		
9	R. P. & R. L. Miller	2 1/8	2 1/8
9	Batten & Co.	2 1/8	2 1/8
9	T. J. McDonald	2 1/8	2 1/8
9	Amer Dir Secs	2 1/8	2 1/8
9	Jones, Kreeger	2 1/8	2 1/8
10	"	2 1/8	2 1/8
10	Batten & Co.	2 1/8	2 1/8
10	T. J. McDonald	2 1/8	2 1/8
10	R. P. & R. L. Miller	2 1/8	2 1/8
11		2 1/8	2 1/8
11	Batten & Co.	2 1/8	2 1/8
11	T. J. McDonald	2 1/8	2 1/8
11	Amer Dir Secs	2 1/8	2 1/8
11	Jones, Kreeger	2 1/8	2 1/8
11	"	2 1/8	2 1/8
12	Batten & Co.	2 1/8	2 1/8
12	R. P. & R. L. Miller	2 1/8	2 1/8
12	T. J. McDonald	2 1/8	2 1/8
12	Amer Dir Secs	2 1/8	2 1/8
12	"	2 1/8	2 1/8
13	Batten & Co.	2 1/8	3
13	T. J. McDonald	2 1/8	3
13	R. P. & R. L. Miller	2 1/8	2 1/8
13	Jones, Kreeger	2 1/8	2 1/8
14	Sat		
15	Sun		
16	T. J. McDonald	2 1/8	3 1/4
16	Amer Dir Secs	2 1/8	3 1/4
16	R. P. & R. L. Miller	2 1/8	2 1/8

J. Ex. 14

Date 1960	Broker	Side	Offer
5-16	Jones - Trepper	2 1/4	2 3/4
16	Batten + Co.	2 3/4	3 1/4
17	R.P. + R.D. Miller	2 1/2	3
17	Batten + Co.	2 1/2	3 1/4
17	Jones - Trepper + Co.	2 1/2	2 3/4
18	R.P. + R.D. Miller	2 1/2	3
18	T.J. McDonald	2 1/4	3 1/4
19	"	2 1/4	3
19	R.P. + R.D. Miller	2 1/2	3 1/4
20	"	2 1/2	3 1/4
20	Batten + Co.	2 1/2	3 1/4
20	T.J. McDonald	2 1/4	3
21	Sat		
22	Sun		
23	T.J. McDonald	3	3 3/4
23	Batten + Co.	3	3 3/4
23	R.P. + R.D. Miller	3	3 3/4
24	"	2 3/4	3 1/4
24	Batten + Co.	3	3 3/4
24	T.J. McDonald	2 3/4	3 1/2
25	"	2 3/4	3 1/2
25	R.P. + R.D. Miller	2 3/4	3 1/2
26	"	2 3/4	3 1/2
26	T.J. McDonald	2 3/4	3 1/2
27	"	3 1/4	4
27	Batten + Co.	3 1/4	4
27	Baker, Watts + Co.	5	
27	R.P. + R.D. Miller	2 1/2	3 1/4
28	Sat		
29	Sun		
30	Holiday		
31	R.P. + R.D. Miller	3 1/4	4 1/4
31	Batten + Co.	3 3/4	4 1/4
31	Baker, Watts + Co.	3	
31	T.J. McDonald	3 3/4	4 1/4
6-1	"	OW	BW
1	Baker, Watts + Co.	3	
1	Batten + Co.	4 1/4	5 1/4
1	R.P. + R.D. Miller	3 3/4	4 1/4
2	"	4	5
2	Batten + Co.	4 1/4	5 1/2
2	T.J. McDonald	OW	BW
3	"	4	4 1/2
3	Batten + Co.	4 1/4	5 1/4
3	R.P. + R.D. Miller	4 1/4	5 1/2
4	Sat		

(3)

J. Ex. 14

Date 1960	Banker	Price	Office
6-5	Sun		
6	Batten + Co.	4 1/4	5 1/4
6	R.P. & R.L. Miller	4	5
6	T.J. McDonald	4 1/4	4 3/4
7	"	4 1/4	4 3/4
7	Batten + Co.	4 1/2	5 1/4
7	R.P. & R.L. Miller	4 1/4	5
8	"	4 1/2	5 1/2
8	Batten + Co.	4 1/2	5 1/4
8	T.J. McDonald	4 1/2	5 1/4
9	"	4 1/4	5
9	R.P. & R.L. Miller	4 1/4	5
10	"	4 1/2	5 1/4
10	T.J. McDonald	4 1/2	5 1/4
10	Batten + Co.	4 3/4	5 3/4
11	Sat		
12	Sun		
13	Batten + Co.	3 3/4	5
13	T.J. McDonald	4 3/4	5 1/2
13	R.P. & R.L. Miller	4 1/2	5 1/4
14	"	4 1/2	5 1/4
14	Batten + Co.	4 3/4	5 1/2
14	T.J. McDonald + Co.	4 1/2	5 1/4
15	"	4 1/2	5 1/4
15	Batten + Co.	4 3/4	5 1/2
15	R.P. & R.L. Miller	4 1/2	5 1/4
16	"	4 1/4	5
16	G.J. Mitchell + Co.	—	5 7/8
16	T.J. McDonald	4 1/4	5
17	"	4 1/2	5
17	Batten + Co.	4 1/2	5 1/4
17	G.J. Mitchell + Co.	—	5 5/8
17	R.P. & R.L. Miller	4 1/4	5
18	Sat		
19	Sun		
20	T.J. McDonald	4 1/4	5
20	G.J. Mitchell + Co.	—	5 7/8
20	Batten + Co.	4 1/2	5 1/4
20	R.P. & R.L. Miller	4 1/4	5
21	"	4 1/4	5
21	G.J. Mitchell + Co.	—	5 7/8
21	Batten + Co.	4 1/2	5 1/4
21	T.J. McDonald	4	4 3/4
22	"	4 1/4	5
22	Batten + Co.	010	BW
22	G.J. Mitchell + Co.	—	5 5/8

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from the

(K)

Date 1960	Broker	Bids	Offers
6-22	R.P. & R.Q. Miller	4 1/4	5
23		4 1/4	5 1/4
23	Batten & Co	4 1/2	5 1/4
23	S.J. Mitchell	—	5 1/4
24	" "	—	5 1/4
24	Batten & Co	4 1/2	5 1/4
24	R.P. & R.Q. Miller	4 1/2	5 1/4
25	Sat	—	—
26	Sun	—	—
27	R.P. & R.Q. Miller	3 3/4	4 1/2
27	Batten & Co	4	4 3/4
28	T.J. " Donald	3 3/4	4 1/2
28	" "	3 1/4	4
28	Batten & Co	3 1/2	4 1/4
28	R.P. & R.Q. Miller	3 1/2	4 1/4
29	" " "	3 1/2	4 1/4
30	" " "	3 1/4	4
30	Batten & Co	3 1/2	4 1/4
7-1	Batten & Co	04	34
2	Sat	—	—
3	Sun	—	—
4	Holiday	—	—
5	No Quotes	—	—
6	" "	—	—
7	" "	—	—
8	" "	—	—
9	Sat	—	—
10	Sun	—	—
11	No Quotes	—	—
12	" "	—	—
13	" "	—	—
14	" "	—	—
15	" "	—	—
16	Sat	—	—
17	Sun	—	—
18	Batten & Co	1/2	1 1/4
19	No Quotes	—	—
20	Batten & Co	1/2	1 1/4
21	" "	1/2	1 1/4
22	Batten & Co	1/2	1 1/4
23	Sat	—	—
24	Sun	—	—
25	Batten & Co	1/2	1 1/4
26	No Quotes	—	—
27	Batten & Co	1/2	1 1/4
28	No Quotes	—	—

J. Ex. 15

(Securities Exchange Act Release No. 6734)

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

February 14, 1962

In the Matter of

BATTEN & CO., INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-7887

MUTUAL FUNDS OF AMERICA, INC.
1835 K Street, N. W.
Washington, D. C.

File No. 8-6560

Securities Exchange Act of 1934 -
Sections 15(b) and 15A

MEMORANDUM
OPINION
AND ORDER

BROKER-DEALER PROCEEDINGS

Motion to Vacate Order Suspending Registration and
to Dismiss Proceedings

Motion by registered broker-dealer and former sole stockholder to vacate order suspending registration and to dismiss revocation proceedings, which are based on alleged securities violations by stockholder, on ground that stockholder had sold his stock and was no longer in control of registrant, denied, where registrant, which was engaged in business of selling mutual funds, assigned to former sole stockholder net commissions to become due on all future investments by customers in open mutual fund accounts as of date of sale of stock in registrant.

APPEARANCES:

Franklin L. Batten, for Mutual Funds of America, Inc.

Alexander J. Brown, Jr., John J. Sharp, and Jack Redden, of the Washington Regional Office of the Commission, for the Division of Trading and Exchanges.

- - - - -

By COHEN, Commissioner:

This is a motion by Mutual Funds of America, Inc. ("registrant"), a registered broker and dealer, and Frank L. Batten, also known as Franklin L. Batten, to vacate an order entered by us suspending its registration pending final determination of the question of revocation, 1/ and to dismiss the broker-dealer proceedings instituted against it pursuant to Sections 15(b) and 15A(1)(2) of the Securities Exchange Act of 1934

1/ Securities Exchange Act Release No. 6436 (December 14, 1960). The registration of registrant, as well as of Batten & Co. Inc., the other respondent, was suspended with their consent.

("Exchange Act"). Movants assert that registrant, which is engaged in the mutual fund business and has not been charged with any securities violations in these proceedings, was named as a respondent only because it was controlled by Batten and that such control has since been terminated pursuant to an agreement dated May 22, 1961, between Batten and Alfred W. Reiter, who had been employed by registrant as a part-time salesman and is now its president. 2/

Our order for proceedings, as amended, alleges that Batten, who owned registrant and Batten & Co., Inc., a registered broker-dealer, which is also a respondent in these revocation proceedings, 3/ willfully violated or aided and abetted Batten & Co., Inc. in willfully violating the registration provisions of the Securities Act of 1933 ("Securities Act"), the anti-fraud provisions of that Act and the Exchange Act, and the record-keeping provisions of the latter Act.

Pursuant to the May 22 agreement, Batten sold all of registrant's outstanding stock to Reiter and his wife for \$500, payable upon our granting the instant motion, and registrant assigned to Batten all right, title and interest in all commissions due or to become due to registrant on all of its sales and accounts as of the date of the agreement, less salesmen's commissions and nominal administrative expenses. Under the assignment Batten would continue to receive registrant's net commissions from the two types of open mutual fund accounts on registrant's books: (1) fixed-payment plans which provide for the deposit by the investor of specified sums at certain intervals for a definite period, and (2) voluntary plans which contemplate future purchases but permit the investor to deposit varying amounts at indefinite times in the future. 4/ Batten was given the right to inspect registrant's books in order to verify that the terms of the assignment were being performed.

Movants assert that Batten's sale and Reiter's purchase of the stock in registrant were motivated by the following considerations. Upon the suspension of registrant's registration, the mutual funds for which it solicited sales had ceased to forward commissions to it and had placed them in escrow pending the final disposition of these proceedings. As a result, registrant and its salesmen, including Reiter, have not received the commissions due them. 5/ Batten chose Reiter to purchase his stock in registrant because he felt that thereby his interest would be "best served." He considered Reiter a good salesman and a loyal employee who had shown an interest in the mutual fund business and would operate registrant in accordance with the securities regulations and assure that Batten would receive the commissions that may accrue to him in the future. Reiter was

2/ Reiter is a U. S. Government employee who had also worked for Batten & Co., Inc.

3/ Batten was president, treasurer, and a director of both companies and owned all of the common and preferred stock of registrant and 99% of the common stock of Batten & Co., Inc.

4/ As of May 22, 1961, the fixed-payment plans accounted for at least 90% of the business written by registrant, and the voluntary plans accounted for the balance. Under the agreement, Batten would not be entitled to commissions resulting from the conversion of voluntary plans into fixed-payment plans.

Batten testified he believes that \$1,200 to \$1,500 in commissions due him have accrued since the suspension but cannot estimate future commissions, stating that they could amount to \$5,000 or \$40,000.

interested in protecting his own commissions from the sales previously made by him and acquiring a business with a small cash expenditure. He thus would gain access to registrant's list of customers for the development of new business and acquire the name of an established company.

According to Batten and Reiter the provision in the agreement for making payments to Batten as customers effected purchases was adopted because of the difficulty of estimating in advance the amount of future commissions that might accrue to Batten, and because of Reiter's inability to purchase the stock in registrant outright assuming a fair price reflecting the present value of future payments could be arrived at. It was also understood that if there were a legal impediment to Batten's receipt of commissions under the assignment, registrant, if in active operation, would retain them.

The hearing examiner filed a recommended decision, dealing solely with the instant motion, in which he found that Batten had in good faith divested himself of control of registrant, and recommended that the motion be granted. No exceptions were filed. Our findings are based upon an independent review of the record pertinent to the motion.

In our opinion, Batten's formal severance of his previous relationship with registrant is not determinative of this motion. Although Batten has promised not to participate in any manner in registrant's operations, the effect of the agreement would be to continue the operation of registrant in part for the benefit of Batten, the alleged wrongdoer. Certainly, if registrant were a sole proprietorship through which Batten sold mutual fund shares as well as other securities and he were found to have committed willful violations that would warrant revocation in the public interest, we would not permit his registration to continue in order to enable him to collect commissions on subsequent purchases of mutual funds by customers. Moreover, we would consider it immaterial that such customers had accounts with the registrant and had entered into arrangements to make such purchases on a contractual or voluntary basis.

We do not think the situation is any different because Batten chose to conduct his securities business through the corporate form or the use of two wholly-owned corporations instead of one. Section 15(b) of the Exchange Act specifically authorizes revocation of a broker-dealer registration if a person in control of the broker or dealer has willfully violated that Act or the Securities Act or any rules thereunder and we find that such revocation is in the public interest. 6/ Thus, even if we consider registrant to be a corporate entity separate from Batten, we may revoke its registration because of any willful violations committed by Batten, its sole shareholder at the time these proceedings were instituted.

Batten originally did all his securities business as a sole proprietor under the name Mutual Funds of America. He subsequently organized registrant, but continued the sole proprietorship registration, the name of which was changed to Batten & Co., and thereafter he formed Batten & Co., Inc. which succeeded to the business of Batten & Co. It is evident that registrant and Batten & Co., Inc. are Batten's alter egos, and that

6/ Even in the absence of a specific statutory authority, in order to carry out the policy of a statute, the courts have not only disregarded the corporate form and considered the identity and character of the controlling persons of the corporation but have also examined their conduct through another corporation controlled by them. Mansfield Journal Co. v. F.C.C., 180 F. 2d 28, 37 (C.A.D.C. 1950); Ohio Tank Car Co. v. Keith Ry. Equipment Co., 148 F. 2d 4 (C.A. 7, 1945).

his willful violations of the securities laws, if established by the record, may be considered their willful violations. 7/ In our opinion it would be inconsistent with the statutory regulatory pattern to permit a broker-dealer to departmentalize his securities business in two or more wholly-owned corporations and, by confining his illegal activities to one, to continue, despite detection of the wrongdoing and a finding that it was of a nature requiring revocation, to participate in the profits of the others.

The instant case is not at all comparable to cases in which we have dismissed or discontinued broker-dealer proceedings because the associated person directly responsible for violations of the securities laws had in good faith dissociated himself from the broker-dealer, or in which we have required separation of the wrongdoer from the broker-dealer as a condition for such action. 8/ In those cases the dissociation of the person found to have committed the violations was complete. In the instant case the effect of the May 22 agreement is to continue Batten's interest in registrant's operations as long as the accounts from which he is entitled to receive commissions remain active. Moreover, revocation of the broker-dealer's registration in those cases would have injured the substantial interests of innocent persons. At the time the instant proceedings were commenced, however, Reiter had no proprietary interest in registrant and payment of any consideration under the May 22 agreement is contingent on our granting this motion. There is also no basis in the record for assuming that our action herein will affect any rights to receive commissions previously earned and now held in escrow.

On the basis of the foregoing, we conclude that the motion to vacate the suspension order against registrant and to dismiss the broker-dealer proceedings against it should be denied. This conclusion is not to be construed as a determination of the issues whether the broker-dealer registrations of registrant and Batten & Co., Inc. should be revoked and whether their memberships in the National Association of Securities Dealers, Inc. should be suspended or terminated; those issues are not now before us.

Accordingly, IT IS ORDERED that the motion of Mutual Funds of America, Inc. and Frank L. Batten, also known as Franklin L. Batten, be, and it hereby is, denied.

Chairman CARY and Commissioners WOODSIDE, FREAR and WHITNEY join in the above opinion.

Orval L. DuBois
Secretary

7/ See Frank B. Hamlin, 2 S.E.C. 509, 512 (1937); Oil Royalties Investment Trust, Ltd., 4 S.E.C. 529, 531 (1939); Lambert, M. W., Inc., Securities Exchange Act Release No. 6633 (September 21, 1961).

8/ See M. Paul Conant and Co., Inc., Securities Exchange Act Release No. 6167 (January 21, 1960); E. H. Rollins & Sons, Inc., 18 S.E.C. 347, 393 (1954); Frank R. Moll and Frank R. Moll & Co., Inc., 16 S.E.C. 379 (August 7, 1944); see also M. S. Wien & Co., 23 S.E.C. 735, 756 (1946).

BRIEF FOR THE PETITIONERS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,018

BATTEN & CO., INC.,
MUTUAL FUNDS OF AMERICA, INC.,
and
FRANKLIN L. BATTEN,

Petitioners,

v.

THE SECURITIES AND EXCHANGE COMMISSION,
and
UNITED STATES OF AMERICA,

Respondents.

Petition for Review of Findings, Opinion and Order
of Securities and Exchange Commission
Revoking Petitioners' Broker-Dealer Registrations

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Washington, D. C.

Attorney for Petitioners

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 10 1964

Nathan J. Paulson
CLERK

(i)

QUESTIONS PRESENTED

1. 1. Did the Commission err in finding that the public offering was 106,875 shares of Class B Stock at \$2.00 per share and that that public offering had not been completed on May 2, 1960?

2. Did the Commission err in finding that petitioners violated sections 5 (a) and (c) and Section 17 (a) of the Securities Act of 1933 and Sections 10 (b) and 15 (c)(1) of the Securities Exchange Act of 1934?

3. Did the Commission err in finding that it was in the public interest to revoke petitioner's registration and to name Batten as the cause of same?

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BRIEF FOR THE PETITIONERS

JURISDICTIONAL STATEMENT

The jurisdiction of this Court to review the findings, opinions and Orders of the Securities and Exchange Commission and to modify or to set aside, in whole or in part, is invoked under Title 15, paragraph 78y of the United States Code (Section 25, Exchange Act, 15 USCA 78y) and applicable portions of the Administrative Procedure Act (5 U.S.C. 1071, et seq.). The Securities and Exchange Commission entered an Order

upon its Findings and Opinions, to which Petitioners have duly excepted, revoking the registrations of Petitioners, Batten & Co., and Mutual, and naming Petitioner, Franklin L. Batten, to be the cause of such revocation, from which order this appeal is taken.

STATEMENT OF THE CASE

The Petitioners, Batten & Co., Inc., and Mutual Funds of America, Inc., hereafter called Batten & Co., and Mutual, respectively, were engaged in securities brokerage business and mutual funds brokerage, respectively, from before February 25, 1960 to December 14, 1960. Petitioner, Franklin L. Batten, hereafter called Batten, was the President of said other petitioners at the said time herein (J. Tr. - 6). The Respondent, Securities and Exchange Commission, hereafter called Commission, is a governmental subordinate division of Respondent, United States of America, and as such was authorized to institute proceedings to inquire into the dealings of Petitioners regarding the sale of certain securities known as Saber Boats, Inc. and to determine whether petitioners had wilfully violated certain enumerated sections of the Securities Act of 1934 (Exchange Act) and rules thereunder (J. Tr. - 2). Pursuant to a notice thereunder, a hearing was held at Washington, D. C., where petitioners were represented by Batten (J. Tr. - 5).

The subject matter of this cause arose from the distribution of securities in the form of Class B common stock of a firm then known as Saber Boats, Inc., pursuant to a claimed exemption from registration under Regulation A of the General Rules and Regulations issued by the Commission (J. Tr. - 7). The offering of said stock was made by an Offering Circular dated February 25, 1960, which indicated that 102,000 shares of Class B stock would be offered to the public at \$2.00 per share and the net proceeds of said offering would be paid to Saber Boats, Inc. Also, that 4,875 shares of Class B stock had been issued to Frank L. Batten, Batten herein, to be regarded as an additional underwriting

commission along with 2,500 shares of Class A Voting Common stock (J. Ex. #6).

The distribution of the Class B stock to the public at \$2.00 per share began on February 25, 1960. There were certain sales of stock entered on or before May 2, 1960, which were transacted in the names of individuals and were subsequently cancelled by repurchase or resale by Batten or his agents. Batten consummated the initial transaction from his personal funds and later caused the endorsement of various checks so as to recover said funds. In the case of James and Ethel Sines, in-laws of Batten, he purchased 1,000 shares of B stock and later cancelled or caused the resale of said stock. This was also done in the name of James B. Pierce, 500 shares of B stock; Kenneth B. and Lorraine Duke, 1,000 shares of B stock; James D. and Audrey Handford, 1,000 shares of B stock; and Clyde B. and Bonnie M. Shorter. Batten testified that because of serious unexpected illness of his wife, he wanted to recover some of the personal money he had put in stock for others. He was entitled to 4,875 shares of B stock and benefit of the proceeds thereof when sold at market (J. Tr. - 6, 8, 9, 27, 28-33, 51, 56) (J. Ex. #6).

There were other transactions which Batten personally financed, some of which were made and intended as gifts to various relatives or friends. These transactions were effected from Batten's personal funds and said stock was not resold but still remain outstanding and fully paid for. Some of these gifts were also bought without the knowledge of the alleged donee. These transactions were 1,000 shares in the names of James F. and Martha Renfrow; 1,000 shares in the names of Willie and Estelle Martin; 1,000 shares in the names of Derwood and Peggy Jones; 500 shares in the name of Rose McCreight; and 375 shares in the name of Louise McArdle. Batten also personally financed the purchase of 1,000 shares for Alfred W. and Frances Reiter, who later sold said stock. Reiter was an employee of Batten & Co.

On May 12, 1960, Batten endorsed a Form 2-A, prepared pursuant to Rule 260 of said Regulation A. This report shows that 102,000 shares were offered at the public offering price of \$2.00 per share and that the proceeds therefrom were distributed or held in cash form for the benefit of Saber Boats, Inc. This report also shows that 4,780 shares were sold on the open market and that Batten retained personal holdings. There were other Brokers dealing in this stock (J. Ex. #4). The completion of the public offering was entered as May 2, 1960, and thereafter Class B stock was sold at the market.

Subsequent to May 2, 1960, a number of transactions in Class B stock was completed. Among these purchasers who bought through Batten & Co. were Esther D. Earnhardt, George Tedore, Marie McMillan, Rex Hammond, Dr. Peter Malnati, and John W. Wheeler. All testified that no agent of Batten & Co. indicated that Batten & Co. was trading or bidding in the "pink sheets." Earnhardt, Malnati and Wheeler indicated that representatives of Batten & Co. optimistically predicted that Saber Boats Class B stock would go up, possibly as much as to \$15.00 per share (J. Tr. - 65, 71, 74, 77, 78-79, 80). The salesmen and Batten had many meetings during the time when Saber stock was being traded on the market. Optimism during these discussions was high. Many thought the stock might be going to ten, twelve, fifteen dollars a share or higher. This was a result of general talk not directly from Batten. They all owned a few shares and were hoping the stock would go up (J. Tr. - 88, 89).

Representatives of Batten & Co. testified that they did not tell the customers of any activities of Batten & Co. in the dealer market and were never told by Batten & Co. to tell customers of its activities in the dealer market, furnish customers with information of its dealings in the dealer market or that its activities might have some influence on the price. These representatives also indicated that they had worked at other brokerage firms and had never heard of any duty to so advise customers or to

tell them that the broker was bidding in the "pink sheets" (J. Tr. 87-91).

There is nothing in the record to indicate that the activities of Batten & Co. in the dealer market did, in fact, influence the market in any unlawful manner. While Batten & Co. appeared to be the most prominent dealer in Saber stock, there appeared nothing unusual about one dealer being more prominent in a particular stock, particularly if the dealer was the underwriter (J. Tr. 92, 93). This did not indicate any effort to rig the market. Batten & Co. purchased 17,980 shares and sold 17,996 shares as principal from May 2, to June 30, 1960 (J. Tr. 94, 95).

Batten had conversations with Edward H. Emerson, Special Consultant on Stabilizing for the Securities and Exchange Commission, the first conversation being on May 2, 1960. Batten was seeking advice on whether he could begin trading Saber stock on the market, to effect open market bids and purchases. No memorandum was made of this conversation as it was so perfectly ordinary (J. Tr. 96-98). There was a later conversation about July, 1960, between Batten and Emerson and it seemed that Emerson was advised that Batten & Co. had begun to buy and sell as principal after a day or two following the completion of distribution and indicated that Batten & Co. was buying and selling as principal and acting as agent in transactions. Batten was advised that this could run the price of the stock up and he, Batten, indicated he had not considered that (J. Tr. 98-100). If a broker has a trading account of 5,000 shares which he wishes to maintain, he may buy or sell shares to maintain this trading account. It is quite normal for the broker to up his bid to replace stock, and might normally do this several days in a row, and be the highest bid quite consistently in the pink sheets (J. Tr. 106-108).

In reference to the ownership of real property by Saber Boats, Inc., the offering circular showed that Saber owned one-half acre of land with buildings of a value of \$26,425. Stanley Berman, president of Saber Boats, and his mother formerly owned said property and in December, 1959, agreed to transfer said property to Saber

Boats or its predecessor, and that a deed conveying same was executed. Berman and all other parties proceeded under belief that Saber Boats had full title to the said property, who occupied said property and made payments thereon. It was discovered that no deed transferring said property had been recorded, so, on July 18, 1960, another deed was executed and recorded on July 19, 1960. The second deed was a duplicate of the first deed, which could not be found (J. Tr. 111-112).

The Hearing Examiner recommended that the registration of Petitioners, Batten & Co. and Mutual be revoked in the public interest and that Franklin L. Batten be found to be the cause of the order of revocation, to which appropriate exceptions were made. The Commission entered such order to which objections were made and upon these, the parties have submitted agreed issues in this cause (J. Tr. 112).

AGREED ISSUES

1. Whether the issue of securities of Saber Boats, Inc., ("Saber"), which was offered under claim of exemption from the registration provisions of the Securities Act of 1933 pursuant to Regulation A, is an exempted security within the meaning of the Securities Exchange Act of 1934.

2. Whether said Saber Boats, Inc., stock was in fact exempted from the registration provision of the Securities Act of 1933 by virtue of Regulation A, and, if so, whether the exemption continued from on or before February 25, 1960, until it was temporarily suspended by the Commission on or about November 25, 1960.

3. Whether the Commission's finding that on February 25, 1960, Saber commenced a public offering of 106,875 shares of its stock at \$2.00 per share is supported by substantial evidence, in view of the fact that the offering circular indicates that 4,875 shares of the Class B stock was to be offered by the petitioner, Batten & Co., Inc., the underwriter, at the market for its own account.

4. Whether the public distribution of the securities of Saber under claim of Regulation A exemption was completed on May 2, 1960 as set forth in Form 2-A filed with the Commission pursuant to Rule 260 of Regulation A or whether said public distribution continued subsequent to May 2, 1960.

5. If the said public distribution of Saber stock continued after May 2, 1960, whether there is substantial evidence to support findings of the Commission that petitioners, Batten and Batten & Co. wilfully violated Section 5(a) and (c) and Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934 and rules thereunder.

6. Whether the 10,000 shares of Class B Saber stock found by the Commission to have been recorded as sold to certain of Batten's relatives, employees and friends just prior to or on May 2, 1960, were bona fide sales to the public so as to close out the public distribution of said Saber stock.

7. Whether the statements found to have been made to prospective purchasers by salesmen of Batten & Co., Inc., or by Franklin L. Batten as to the future performance of Saber stock constituted violations of the anti-fraud provisions of Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934 and rules thereunder.

8. Whether there was substantial evidence to support the Commission's finding that it was in the public interest to revoke the registrations of petitioners Batten & Co., Inc. and Mutual Funds of America, Inc.

9. Whether the entry in the records of petitioner Batten & Co., Inc., kept in connection with the transactions relating to the 10,000 shares mentioned in issue 6, above, constituted violations of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder.

POINTS RAISED ON THIS PETITION FOR REVIEW

The Commission erred in the following respects:

1. In finding that on February 25, 1960, Saber commenced a public offering of 106,875 of its Class B stock at \$2.00 per share.
2. In finding that on May 2, 1960, the public distribution of said Saber stock had not been completed and that same continued after May 2, 1960.
3. In finding that petitioners wilfully violated section 5(a) and (c) and Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934 and rules thereunder.
4. In finding that the public distribution of Class B Saber stock was not completed on May 2, 1960; and, by finding that 10,000 shares recorded as sold to certain of Batten's relatives, employees and friends was the cause thereof.
5. In finding that statements made by salesmen of Batten & Co. as to future performance of Saber Boat stock constituted violations of the anti-fraud provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and rules thereunder.
6. In finding that it was in the public interest to revoke petitioners registration and to name Batten as the cause of same.
7. In finding that certain bookkeeping entries of Batten & Co., kept in connection with said 10,000 shares above constituted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.
8. And for other errors which may be raised by the issues and may be apparent from the record, or come to the attention of the Reviewing Court.

STATUTES INVOLVED

15 U.S.C.A. sec. 77e (a) and (c), May 27, 1933, c. 38, Title I, sec. 5, 48 Stat. 77; as amended June 6, 1934, c. 404, sec. 204, 48 Stat. 906; and as further amended Aug. 10, 1959, c. 667, Title I, Sec. 7, 68 Stat. 684, provides:

"77 e.(a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly-

"(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

"(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

"(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title."

15 U.S.C.A. sec. 77q(a), May 27, 1933, c. 38, Title I, sec. 17, 48 Stat. 84; as amended Aug. 10, 1954, c. 667, Title I, sec. 10, 68 Stat. 686, provides:

"77q(a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly -

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser."

15 U.S.C.A. sec. 78j(b), June 6, 1934, c. 404, Sec. 10, 48 Stat. 891, provides:

"78 j. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange -

"(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

15 U.S.C.A. sec. 78o(c)(1) and (2), June 6, 1934, c. 404, sec. 15, 48 Stat. 895; as amended May 27, 1936, c. 462, sec. 3, 49 Stat. 1377 and June 25, 1938, c. 677, sec. 2, 52 Stat. 1075, provides:

"78o. (c)(1) No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security (other than commercial paper, bankers acceptances, or commercial bills) otherwise than on a national securities exchange, by means of any manipulative, deceptive or other fraudulent device or contrivance. The Commission shall, for purposes of this subsection, by rules and regulations define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent.

"(2) No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation. The Commission shall, for the purpose of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious."

SUMMARY OF ARGUMENT

The sale of Class B stock of Saber Boats, Inc. by Batten & Co. was transacted under an exemption from registration pursuant to Regulation A of the General Rules and Regulations adopted by the Commission pursuant to the authority of the Securities Act. One Hundred and Two Thousand shares were to be sold at \$2.00 per share. Four Thousand, Eight Hundred and Seventy-five shares were issued to Batten and he was entitled to dispose of this stock for his benefit at the market. In the period from February 25 to April 25, two months, almost 96,000 shares had been marketed at an average of about 10,000 shares per week. From April 28 to May 2, Batten purchased about 8,380 shares of said stock with his own personal funds and personally paid for 1,000 shares for one of his employees as a personal loan. There is no evidence to indicate that Batten, in his personal capacity, did anything wrong. There remains outstanding, fully paid for 3,500 shares, either in street form or in the accounts of individuals in whose names the stock was purchased. These transactions were bona fide on the part of Batten and did not constitute any manipulative or deceptive practice, nor in the light of the circumstances constitute a fraudulent act. Batten already owned 4,875 shares of Class B Saber stock by virtue of his

relationship in the sale of said issue, which was publicly noted in the Offering Circular. In addition, this block of stock was to be offered at market, a condition which establishes that the offering at \$2.00 per share was to be for \$204,000.00. The Form 2-A report filed by Saber and Batten & Co. clearly showed that the public offering was 102,000 shares and that Batten was owner of at least 4,780 shares, the same being owned by Batten and transferred by virtue of the underwriting agreement so that in fact all 106,875 shares had been transferred as of May 2, 1960.

No member of the public was injured in any of these transactions but in fact, Batten himself lost \$7,000.00 or more in buying the 3,500 shares still remaining outstanding. This does not support any inference of wrongful manipulation, deception or fraud, but in fact negates such inference inasmuch as Batten made no effort to sell these securities when the market was as much as \$5.00 per share.

The purchases and sales of Batten & Co. as principle indicate that its transactions barely kept its stock account even. It does not show any accumulation which would infer price control. Other brokers were bidding in the market freely, many times the highest bidder was a broker other than Batten & Co. Batten & Co.'s participation did not constitute fraud, deceit or manipulation and it could have been more readily said to have been violations of securities laws if Batten & Co. had told customers that it was buying stock. Such device no doubt could have influenced a buyer more than any presentation by representatives of Batten & Co.

The opinions of the sales representatives of Batten & Co. amounted to no more than an expression of a bona fide belief. They did not hold out to a purchaser that such performance was guaranteed and the record lends little to conclude that any purchasers seriously relied on same. Further, it is apparent from the discussions at sales meetings that all the representatives of Batten & Co. including Batten had great optimism

and confidence in Saber Boats stock. Therefore, it is urged that no wrongful conduct was shown.

The records of Batten & Co. were not wrongfully or fraudulently kept. The transactions claimed to have been fraudulent were the transactions involving Batten's personal funds and stock. His explanation of each transaction was reasonable. Inasmuch as none of the named persons claimed benefit of the transactions and disavowed entitlement, Batten, who personally paid for same, was entitled to recover his funds. Certainly, none of the persons involved lost anything or had any real interest therein. The incident involving James Sines had no connection with the buying or selling of a security having been established to have occurred in October, 1960, at least four months after the Sines transaction. The Sines testimony, which Batten denied in some material respects, did not constitute a violation of the alleged securities acts.

It was not in the public interest to revoke the registration of Batten & Co., and Mutual, or to name Batten as the cause of revocation. Batten had little to do with any alleged violations other than the transactions involving his own funds and stock. There was nothing unusual, in the light of the circumstances then existing, about the transactions handled by the various representatives. No evidence was presented upon which it could even be inferred that Batten instructed representatives to make false statements or fraudulent representations.

Finally, the Commission's position that the Offering Circular made untrue statements of material facts or its omission to state material facts was in light of circumstances false and misleading involved the ownership of the land on which the plant was located. The circumstances of that incident clearly exonerates Batten & Co. of any violation.

ARGUMENT

There are before this Court five major issues which go to the heart of the case of the Commission against the petitioners; first, whether said Saber Boats stock was exempt from registration pursuant to Regulation A, General Rules and Regulations under the Securities Act; second, whether the public distribution at \$2.00 per share had been completed on May 2, 1960, so that trading at the market could then begin; third, whether there was any substantial evidence to establish that petitioners used fraudulent, deceitful or manipulative devices or means to induce or attempt to induce the purchase or sale of said securities; fourth, whether the bookkeeping and check transactions connected with the resale of securities caused by Batten which involved his personal funds or stock was under the circumstances and his explanation violations of the Securities Act or Exchange Act; and fifth, whether the offering circular in failing to show the real property defect in title, in light of the circumstances then existing, constituted a violation of the securities act which would void all transactions under the claimed exemption, or, in effect, render an exemption previously claimed non-existent.

I

Saber Boats, Inc. stock issue in question was exempt from registration pursuant to Regulation A, General Rules and Regulations, in that the Issuer had claimed same and this claimed exemption was not suspended until November 25, 1960.

There has been no serious contention on the part of the Commission that an exemption under said Regulation A had not been applied for in accordance with its regulations. No formal approval is specified on

the part of the Commission, but it appears that the Issuer shall cause to be filed at least 10 days, excluding Saturdays, Sundays and holidays, a notice (Form 1-A) and thereafter the securities in question can be marketed under the claimed exemption without any approval by the Commission, which requires that the offering circular show that the Commission has in no way passed upon the merits of or given approval to, the securities offered. 17 CFR 230, 252, 255, 256, 259. The offering circular contained the required statement on its face (J. Ex. #6). It is therefore concluded that the exemption was in effect from February 25, 1960, until the Commission entered an order temporarily suspending the exemption of said Saber Boats, Inc. issue of securities. One of the enumerated grounds warranting a suspension deals with the insufficiency of an offering circular. 17 CFR 230, 261 (a)(2). Thus, it can only be reasonably concluded that an exemption from registration existed prior to a suspension of same. If it was intended that an exemption should be voided with retroactive effect to the date of the initial claim of exemption, the Commission could easily have provided for same; however, it is doubtful that such ex post facto action could have been lawfully done.

II

The public distribution at \$2.00 per share of said Saber Boats stock had been completed on May 2, 1960, and petitioners were entitled to trade said stock on the market.

The report of Saber Boats, Inc. and petitioner, Batten & Co., on May 12, 1960, shows that \$204,000.00 was received from the public for the Issuer and that the underwriter had fully accounted for these proceeds by either having disbursed same to issuer or by holding the balance as cash on hand available to issuer (J. Ex. #4). No real question has been raised as to whether the issuer received the net proceeds. There being no substantial issue in that respect, it appears that

respondent's contention that the public issue had not been completed so that such securities could be traded on the open market is based upon the fact that certain shares of stock had been purchased by Batten in the names of other individuals without their knowledge. It is clear that no funds of said individuals were involved and as part of the stock paid for by Batten there remains outstanding 3,500 shares which Batten indicated were intended as personal gifts. The transactions which Batten caused to be resold or cancelled totalled 4,500 shares. This was 375 shares less than he owned outright by virtue of the underwriting agreement and in no way affected the public distribution or the proceeds therefrom (J. Ex. #4, #6). It therefore appears that it is speculative and conjectural as to what effect the transactions may have had on investors. No particular investor has been singled out as a complainant or otherwise injured by the transactions. The only real personal loss as a result of Batten's purchases would be Batten's, as donor, or the individual donees who have evinced no desire to complain. Respondent obviously contends that Batten did not intend the outstanding transactions as gifts but as repositories of stock to be sold at an advantageous time so that he could pocket the profit. What explanation do respondents have for the fact that Batten, a person most likely to know when to sell according to their evidence, did not sell the said stock but allowed same to become worthless for a loss of \$7,000.00? There is no reason based upon respondents' logic, but a very plausible answer exists if these shares were considered gifts, the proceeds of which had already been distributed to the issuer.

III

There is no substantial evidence to establish that petitioners, Batten & Co. and Batten, used any fraudulent, deceitful or manipulative devices or means to induce or attempt to induce the purchase or sale of said securities.

This case is considerably different from cases in which the Commission have found manipulation to exist in that here, the evidence fails to show an almost indispensable element of fraud, deceit and manipulation, that is, substantial gain thereby and defrauding another person.

Several cases which have been passed upon by the Commission indicate the underwriter participated in nearly all transactions involving 98% of all money involved, that the underwriter actively influenced the stock up for more than \$20.00 per share; that the underwriter built up a large surplus of the stock and unloaded at the most appropriate time and induced other brokers to make false bids. In the Matter of M. S. Wein & Co., 23 SEC 735. Even in that case the Commission indicated that it was the cumulative effect of the violations, not isolated transactions, that was determinative of the violations (Wein, supra, p. 740).

An even more flagrant case of violations resulted in a suspension of 60 days. There it was found numerous incidents of sales of securities at prices having no relationship to prevailing market prices and the buying and selling of same with special funds of others, there was excessive trading of securities in small accounts of others to the extent that the account owner was defrauded, fictitious transactions using funds of customers were made (not funds of the broker) and false ledger entries connected therewith. In the Matter of E. H. Rollins & Sons, Inc., 16 SEC 347. The manipulation of another person's funds, purchases made with customers funds and false entries connected therewith is a far cry from Batten using his own funds to execute a transaction, which for one of

several reasons, he felt it necessary to recover the funds that he personally committed.

Of course, sales at excessive markups might infer some fraud if unexplained. Charles Hughes & Co. v. Securities and Exchange Commission, 139 F.2d 434, 436. There was no evidence indicating this to exist in the instant case.

In the above cited cases, the actual proof of fraud, deceit, personal gain, and manipulation existed. The wrongful intent was patent. Here, respondents first infer that Batten & Co. were manipulating or price fixing by reason of the fact that it bid and offered said stock on the open market. The next necessary step is to infer that this was done for fraudulent or deceitful purposes. Next we must infer the gain or likelihood of same. Then, we must infer that some unknown customer must have been affected and then infer that the public interest demands revocation of the registration of petitioner, Batten & Co. Finally, respondents ask a further giant inference be indulged in, that is, Mutual, a corporation formerly engaged in the sale of Mutual Funds under the Investment Act of 1940, must have its registration as broker-dealer revoked because of the alleged violation of Batten & Co. and Batten, although no evidence exists that Mutual participated in the acts complained of or could remotely manipulate the securities it traded. The Court ought not allow even administrative agencies to indulge in basing inferences on inferences. Automobile Sales Co. v. Bowles, (D.C. - Ohio) 1944, 58 F. Supp. 469.

Batten was not attempting to use manipulative devices in recovering personal funds to which no other person had a real claim. Even where a donor gives to his agent certain stock and the donees have no knowledge or were otherwise in privity with donor concerning the gift, donor has the absolute right to revoke gift either on non-delivery or non-acceptance. Lust v. Miller, 55 App. D.C. 217.

Batten sought advice from the Commission's expert, Edward H. Emerson, and the action of Batten & Co. and Batten can be reasonably

founded upon same. Certainly this goes to the issue of interest and shows a desire to proceed properly. The instant case certainly differs from those cases where the Commission repeatedly warned brokers of specific violations and after further repeated infractions finally revoked their registration. In Hughes v. Securities and Exchange Commission, 85 U.S. App. D.C. 56, 63, this Court said that there is no room for doubt that a broker's violations were willful where, prior to the institution of proceedings, the broker had been repeatedly advised by members of the Commission staff that its methods of conducting business were unlawful. This is a humanitarian method of administering justice, much like the two-bite theory granted to a dog. In the instant case, contrary to this view and Batten's efforts to be advised, the respondents revoked petitioners' registrations as broker-dealers. No doubt, the incident allegedly occurring between Batten and the Sines influenced this decision but it is pointed out, regardless who is believed concerning that incident, that it was not connected with any security transaction, occurring several months after the alleged transactions and should not influence this Court's decision.

There was no evidence to indicate that any representations made by representatives of Batten & Co. were other than bona fide belief of the representatives and Batten, himself (J. Tr. 88-89). Certainly, optimism in a stock is not per se fraud or deceit nor does it constitute a manipulative device. It is inconceivable that a representative would sell a stock that he represented to be on the decline, unless he express optimism that the stock would recover. If he withheld his opinion, it could easily be inferred at a later date that he fraudulently withheld his opinion to deceive the customer, whether the stock went up or down. Customers expect enthusiasm from the salesman and common sense discounts or weighs its value. The evidence in this, by and large, indicates that the customers used their own judgment. There is nothing more irritating on Monday morning than to be told how you should have carried the ball, a past-time available for the indulgence of all, and

nothing more appreciative than that same advice on the afternoon preceding the game. Here, Batten sought the pre-game advice but got the Monday morning briefing. Material and substantial rights of petitioners are herein involved, under great authority and power of respondents. The findings of their hearing result in the destruction of Batten's businesses and career and must be based on substantial evidence of probative value and not on suspicion, innuendo and faulty conclusions on disputed facts. For this reason, the findings and conclusions and order of the Commission should be disapproved and set aside or otherwise modified so as to render justice according to the cause, particularly in connection with petitioner, Mutual, who avers that the Commission's action was unjustified and arbitrary. Automobile Sales Co. v. Bowles, 58 F. Supp. 469, 473.

IV

The bookkeeping entries and the transactions concerning the cashing of checks connected with Batten's resale of securities which he had purchased did not amount to a wilful violation of the Securities or Exchange Act, under the circumstances.

A case previously cited, In The Matter of E. H. Rollins & Sons, Incorporated and Walter Cecil Rawls, supra, involved fictitious transactions and false ledger accounts. In that case, Rollins actually used a customer's funds for its personal gain and without the knowledge of the treasurer of the funds. The element of scienter is clear, the fraud patent and the bookkeeping entries a necessary part of the modus operandi of the deceit, fraud and manipulation. Using others' money without their permission is generally considered a crime particularly where it operates to the user's gain and detriment of the owner. No such evidence exists of fraud in the instant case but again we are called on to cast about for inferences to be pyramided upon inferences to reach the con-

clusion of fraud. The Court should reject the respondents' conclusion of fraud and a wilful violation of securities laws, which objectively examined amounts to no more than misguided acts to recover funds rightfully his in the first place.

V

The failure of the offering circular to show the real property defect in title, in the light of the circumstances then existing, does not constitute a wilful violation of the securities acts which would justify a finding that the claimed exemption was not in effect.

The records are clear that Batten & Co. and Batten did not have the slightest idea that a technical defect might exist in the title of land listed in the offering circular. It is hard to conceive that the fly-speck defect found there could be considered sufficient to void the claimed exemption, and by the use of this device deprive Batten of his livelihood and revoke the registration of the petitioners. If this be true, then we would have seen the pinnacle of manipulation of a statute to accomplish in a legal sense the straining of the gnat and the swallowing of the camel. Mr. Berman, President of Saber Boats, Inc., and co-owner with his mother of the parcel of land transferred to Saber Boats, Inc., stated that he and his mother executed the deed to transfer the property and later found the deed had not been recorded. Subsequently, a new deed, a duplicate of the original, was executed and recorded July 19, 1960, correcting the error and vesting title in Saber Boats, Inc. No one has suggested how Batten & Co. was, in the ordinary course of business, supposed to know of the said defect in title and only the finest technician could have combed this out of a mass of records involved, but his ability is still second to the ingenuity which developed this into a violation of the securities law. Whether under Maryland law, this amounts to some defect in title is, in petitioners' view, academic inasmuch as this has been rectified in good faith.

CONCLUSION

For reasons hereinbefore set forth and for those as may be apparent to this Court it is respectfully submitted that the said proceedings should be reviewed by the Court and that the Court should grant, order and decree:

(a) that the Order of the Commission revoking the registrations of Batten & Co. and Mutual as broker-dealers be vacated and set aside;

(b) that if the Court does not vacate and set aside the said Order, that the said Order be modified in whole or in part so as to reduce action of the Commission to a suspension rather than a revocation of the registrations of the petitioners, Batten & Co. and Mutual;

(c) that the Order of the Commission holding Batten to be the cause of the revocation of Batten & Co. and Mutual be set aside and vacated; and

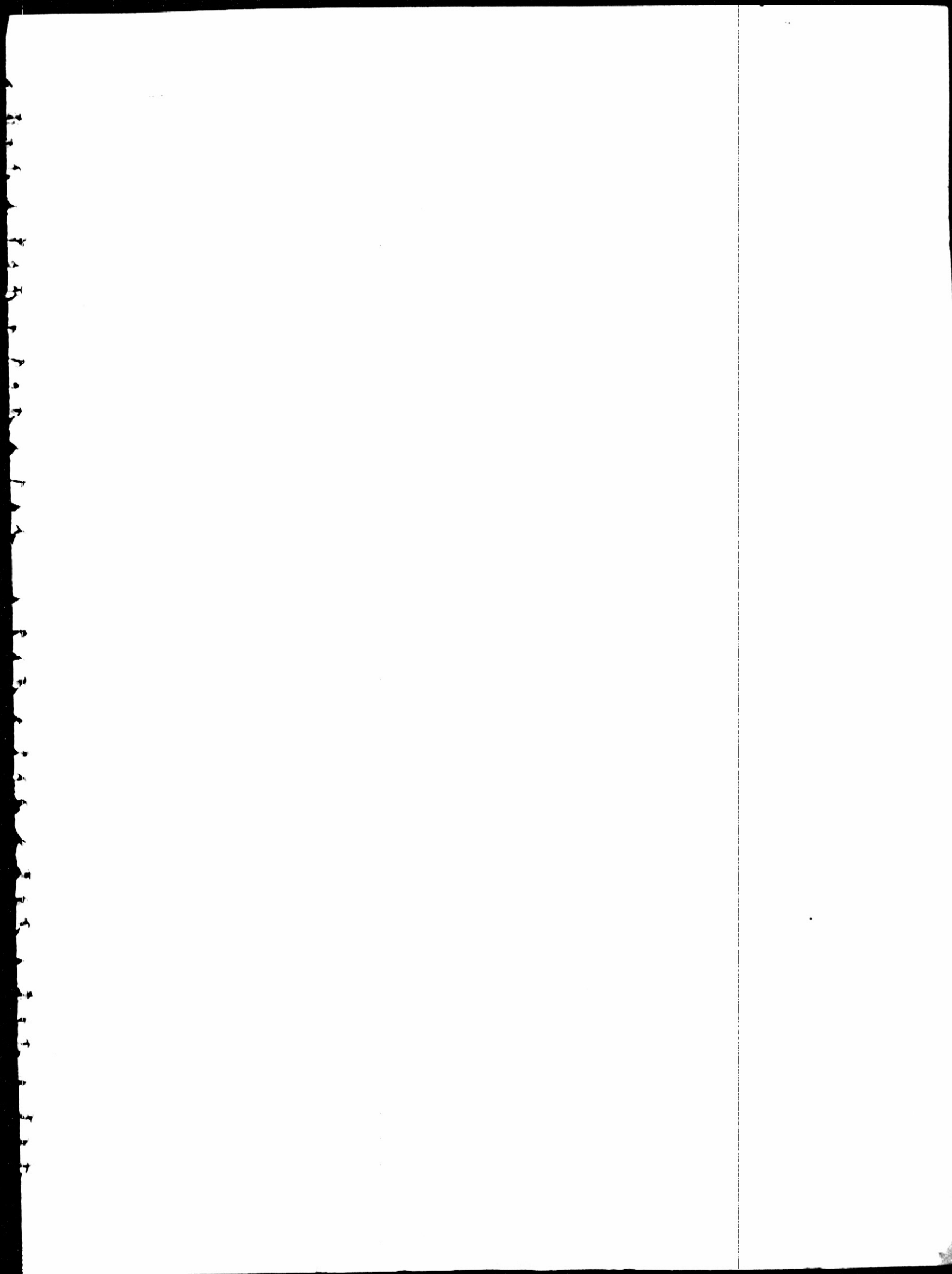
(d) that such other relief as may be appropriate be granted in this cause.

Respectfully submitted,

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REPLY BRIEF OF PETITIONERS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,018

BATTEN & COMPANY, INC.,
MUTUAL FUNDS OF AMERICA, INC.,

and

FRANKLIN L. BATTEN,

Petitioners,

v.

THE SECURITIES AND EXCHANGE COMMISSION

and

UNITED STATES OF AMERICA,

Respondents.

Petition for Review of Findings, Opinion and Order of
Securities and Exchange Commission Revoking
Petitioners' Broker-Dealer Registrations

United States Court of Appeals
for the District of Columbia Circuit

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REPLY BRIEF OF PETITIONERS

SUMMARY OF ARGUMENT

1. Saber Boats, Inc. was not a completely new, untested and inexperienced boat building firm but was a company, through its predecessors, having continuous operation for about six years prior to the distribution involved.

2. Batten and Company and its representatives dealt fairly with their customers and did not misrepresent material facts to them or otherwise fraudulently or deceitfully deal with them.

3. Respondents seek to have the Court adopt a strained interpretation of the definition of fraud and deceit and manipulative devices.

4. Respondents rely on conclusions not supported by the facts in asserting that the public offering had not been completed on May 2, 1960.

ARGUMENT

I.

There was no substantial evidence presented by Respondents to establish violations of Sections 10 (b) and 15 (c) (1) of the Exchange Act and rules thereunder; nor did the Respondents establish that any predictions made were not made upon information received which would support such predictions.

Contrary to the Respondents' continued assertion that Saber was a new company, it was in fact a going concern when incorporated and had been doing business in the boat business since 1954, approximately six years prior to the distribution of the stock in question. Unrebutted by any evidence are the factual statements of the Offering Circular which indicates that Mr. Stanley Berman, President and Organizer of Saber Boats, Inc., had been building a boat known as "Saber" since 1957, building 12 "Saber" Cruisers in 1957, 33 "Saber" Cruisers in 1958 and 63 "Saber" Cruisers in 1959 (J. Ex. 6). The "Market Research Letter," apparently prepared by Sid Shore contains a wealth of information which indicates that Saber Boats, Inc. did not appear in any financial difficulties according to the source of his information. It is indicated that a profit of 20 cents per share was realized in the first quarter of operation with an estimated 50 cents per share net earnings

for the semi-annual period. The information related therein reasonably justified optimism for Saber Boats, Inc. (J. Ex. 5). No evidence was produced to show this data was assembled in bad faith, or, for that matter, to show that any of the information was untrue. The source of the information is not shown, but due to the nature of the information it is only reasonable to conclude that it was furnished by Saber Boats, Inc. The evidence shows that the financial plight of Saber Boats, Inc. was known to Batten & Company, its agents no earlier than the last Friday of June or about July 1, 1960 and Frank Batten thereafter did everything within his power to keep Saber Boats, Inc. alive, including drawing out cash from his personal funds and personally going to Saber Boats plant where he paid the employees their salaries for at least two weeks (J. Tr. 113-116). Nothing in the record justifies a conclusion that either Batten, Batten & Company, or its agents utilized any material for sales purposes known to them to be untrustworthy. Respondents' conclusion to the contrary is not supported by evidence.

Respondents urge that Batten & Company was a prominent dealer in Saber Boats stock from May 2 to June 30, 1960. It was also the distributor who no doubt, in fulfilling its obligation to sell Saber stock on a "best efforts" basis, had considerable publication of the distribution and was better known to the public for this issue; however, although Batten & Company did occupy such a position, it is noted that R. P. and R. A. Miller is listed as having the High Bid for 10 days, and T. J. McDonald as having the High Bid for 12 days. Upon Respondents' logic, must we also infer some purpose in violation of Securities laws to these firms? Other brokerage firms had high bids during the period from May 3 to June 30, 1960 (J. Ex. 13).

The case of Securities and Exchange Commission v. Capitol Gains Research Bureau, ___ U.S. ___, 84 S. Ct. 275, 11 L. Ed. 2d 237 (1963) dealt with the Investment Advisers Act of 1940 and the dissemination of a professional advisory service letter for which its clients paid a fee.

There it was pointed out that a fiduciary relationship existed. Apparently, the defendant there would purchase certain securities at a low price then recommend it in their investment service to their clients and sell them the securities for a good profit. The relief sought was an injunction against future transactions without full disclosure to the clients. This conduct was condemned specifically by investment advisers who testified in the case. The Court pointed out that this constituted a conflict of interest and that in a suit for equitable or prophylactic relief (that is, to restrain the defendant therein from effecting future transactions of this nature) where monetary damages are not involved all the elements of common law fraud need not apply. In *Batten & Company*, Respondents are not asking for equitable or prophylactic relief from alleged future repeated acts but have destroyed petitioners' business and seek to permanently bar them from business by the revocations issued. Certainly, the Court ought to consider a distinction between the Investment Advisors Act and the ones presently in question and require greater weight of evidence than that presented by Respondents.

Petitioners urge that the Respondents, in urging that general principles of fraud and intent should be completely ignored and that the Court should adopt their interpretations of the terms "any device, scheme or artifice to defraud and any act, practice or cause of business which operates or would operate as a fraud or deceit upon any person" (Respondent Br. 21). The language itself imports more than technicalities or hypothetical fraud and deceit and therefore the Court should examine the evidence and differentiate between facts and conclusions reached by the Commission as facts. Respondent, Commission, having complete authority to set up protective regulations for the qualification of the distribution of stock under claimed exemption, adopted a regulation, which by their own argument, is replete with pitfalls, easily subject to the use of false data, and operative without any approval by the

Commission. Apparently, the Commission affords the issuer no form of approval and assumes no responsibility for guidance given by its agents but instead takes the position that the securities dealer, in hanging out his "shingle" is qualified to judge the law, the business and his conduct (Respondent Br. 22). He does not, however, have the right to pass judgment on his own case, nor have trial in a legal forum where the Commission would assume its rightful position as an adverse party rather than judge. For the above reasons, respondents urge that the review by this Court is more than a review of a lower court where all constitutional rights, including trial by jury, are afforded. "Substantial evidence" should be considered by this Court to mean at least a preponderance of the evidence, the determination of which is exclusively vested in this Court.

II.

Contrary to the Assertions of Respondents, Batten & Company and Petitioners comply with the terms and conditions of the Regulation A Exemption from Registration.

The Respondents ignore the fact that 4875 shares of said Class B stock belonged to Franklin L. Batten on or before February 25, 1960, and that this fact was clearly set forth in the Offering Circular. Respondents further ignore the fact that only 102,000 shares of said Class B stock was to be offered to the public at \$2.00 per share. Obviously 106,875 shares of said Class B stock had been issued or was to be issued according to the Offering Circular, but said Offering Circular made it clear that Batten's Class A and B Stock would be offered at market. This means at whatever price the market has established and petitioners contend that this stock could have been transferred by Batten or held for any indefinite length of time. Petitioners further claim that the evidence establishes that 102,000 shares of stock had been sold to bona fide purchasers and the only stock in question is

that 4,875 shares designated to Batten. This has provided the Respondents, not the Petitioners, with a smoke screen to confuse real and substantial issues and a springboard for their conclusion that the public offering had not been concluded on May 2, 1960. If this contention merits serious consideration, the Court will find that the evidence does not establish any date as being the date that the public offering had been concluded, although the Commission accepted without question a report dated May 12, 1960, which claimed the public offering had been completed on May 2, 1960. It also showed that the amount received from the public for the issue as \$204,000.00, and gave an accounting of those proceeds and indicates that Franklin L. Batten had sold 4,780 shares of Class B Saber Stock (J. Ex. 4). This report truly reflected the facts and the Respondents then had a copy of the Offering Circular to examine for any conflicts. Therefore, petitioners urge that Respondents are attempting to brace a precariously toppling case with conclusions of fact unsupported by substantial evidence.

Respondents in their brief further jump to the conclusion in averring that an employee of Batten and Company indicated that he would purchase Saber Boats shares only if the stock would "take off" during the trading (Respondent Br. 29). An examination of this witness' testimony shows that Alfred W. Reiter placed the purchase order with the intent to sell other securities to pay for some, but instead asked Batten to lend him the money. He bought the stock in good faith having no idea how long he might hold it and later he decided to sell because it did not look like the stock was going to take off (J. Tr. 59-61).

Respondents have taken the position that petitioners have failed to register the securities as provided by law and rest their conclusion on the fact that an exemption for Saber Boats stock never existed. Petitioners say that such a conclusion is not supported in law. It would

create complete chaos to hold that the exemption never existed. Even the Commission regulations provide for a temporary suspension to be followed by a hearing and if necessary a permanent suspension of the exemption. The only logical conclusion that can be drawn is that the exemption existed up to the time of suspension. The case of R. A. Holman & Company, Inc. v. SEC, 112 U.S. App. D.C. 43, 299 F.2d 127, cited by respondents, does not hold otherwise but rather indicates that the suspension goes only to the right to transact future sales of the securities involved.

Respectfully submitted,

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BRIEF FOR RESPONDENTS

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

United States Court
for the District of Columbia

FILED MAR 3 1968

No. 18,018

Nathan J. Paulson
CLERK

**BATTEN & CO., INC.,
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v.

**THE SECURITIES AND EXCHANGE COMMISSION,
and
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**Petition for Review of Findings, Opinion and
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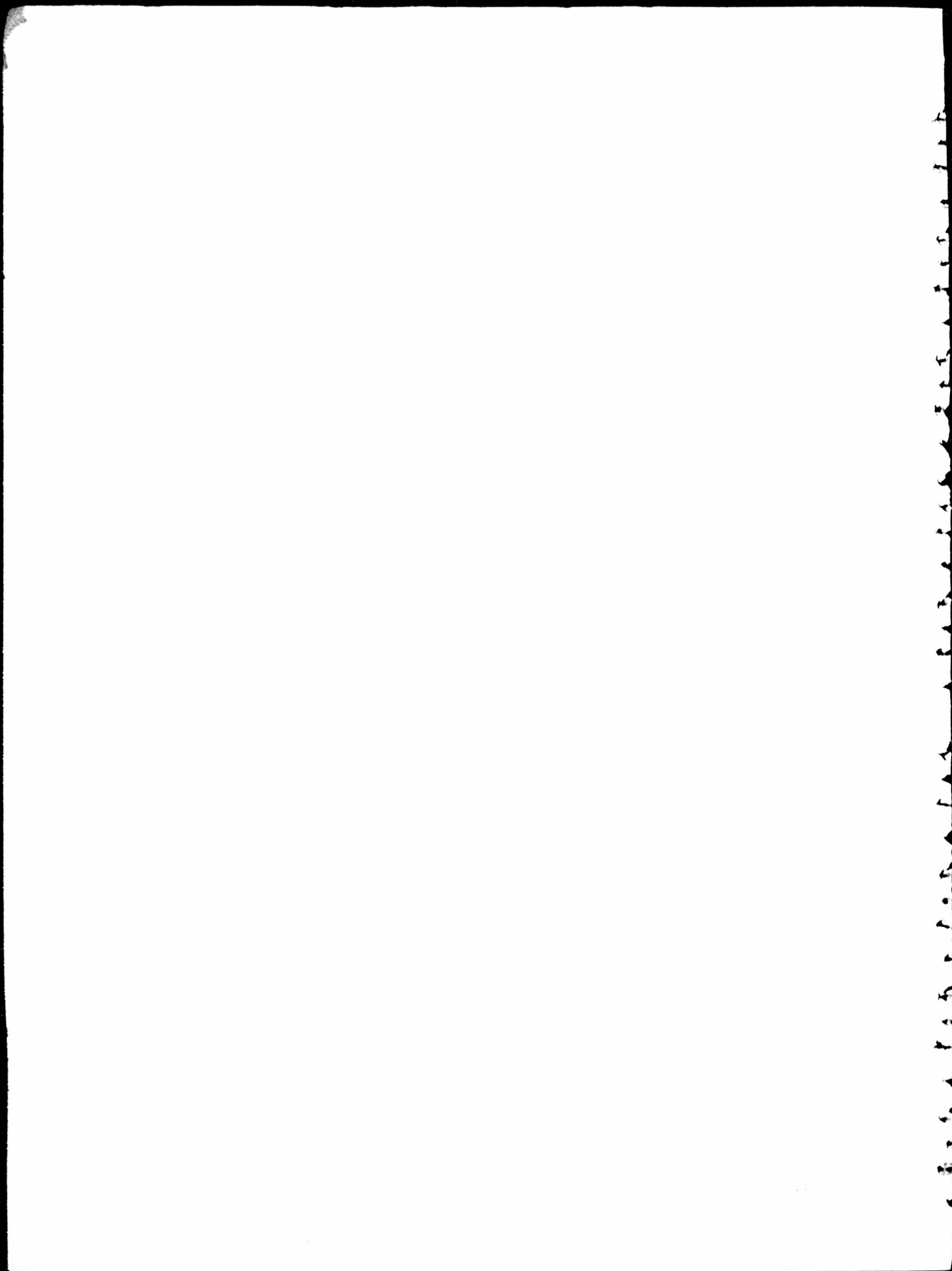
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QUESTIONS PRESENTED

*/

In the opinion of respondents the questions are:

(1) Did the Securities and Exchange Commission properly find that a registered securities dealer, acting as an underwriter and together with or aided and abetted by its president and controlling stockholder, by falsely representing the completion of a public offering of stock, recording fictitious sales of the stock on its books, bidding for and purchasing the stock in the market while continuing the original distribution, and recommending the purchase of the stock upon the basis of unfounded predictions of future prices, willfully violated the registration and antifraud provisions of the Securities Act of 1933 and the antifraud and bookkeeping provisions of the Securities Exchange Act of 1934?

(2) Did the Commission abuse its discretion in finding that it was in the public interest to revoke the broker and dealer registrations of the underwriter and of another securities dealer under common control with it where the president and controlling stockholder of both registrants was the cause of the violations?

*/ These questions encompass all the Agreed Issues set forth at pp. 6-7 of petitioners' brief except Issue No. 1, which raised the question of whether the stock involved here was an exempt security under the Securities Exchange Act of 1934. Petitioners have not briefed that issue and apparently have abandoned it since they would have the burden of proof that the stock comes within the exemption. Cf. Securities and Exchange Commission v. Ralston Purina Co., 346 U.S. 119, 126 (1953).

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COUNTER STATEMENT OF THE CASE

Nature of the Proceeding

Petitioners seek review of an order of the Securities and Exchange Commission which revoked the broker and dealer registrations of Batten & Co., Inc. and Mutual Funds of America, Inc., ("Mutual") and found Franklin L. Batten to be a cause of the revocation. The Commission's order (J. Ex. 2)^{1/} was entered on May 29, 1963 pursuant to Sections 15(b) and 15A(b)(4) of the Securities Exchange Act of 1934, as amended ("Exchange Act"). Prior to entry of the revocation order, hearings were held before a hearing examiner, opportunity was afforded for the filing of proposed findings of fact and conclusions, the hearing examiner submitted a recommended decision, briefs were filed with the Commission, and oral argument was heard.

In its Findings and Opinion of May 29, 1963, (J. Ex. 2), on the basis of its independent examination of the record, the Commission affirmed the findings of its hearing examiner that in the offer and sale of the Class B common stock of Saber Boats, Inc., ("Saber"), Batten & Co., together with or aided and abetted by Mr. Batten, willfully violated Sections 5(a) and (c) of the

^{1/} References "J.S. ____" are to the pages of the Joint Stipulation of Facts and Transcript herein; "J.Ex. ____" are to the Joint Exhibits made a part thereof; and "Br. ____" refers to pages of petitioners' brief.

Securities Act of 1933, ("Securities Act"), the securities registration provisions; Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and rules 10b-5, 10b-6 and 15c1-2 thereunder, the antifraud provisions; and Section 17(a) of the Exchange Act and rule 17a-3 thereunder, the record keeping requirements. The Commission further found that the violations of Batten & Co. and Mr. Batten were "serious and extensive," and concluded "in view of Batten's ownership and control of Mutual, that it is in the public interest to revoke the registrations of both Batten & Co. and Mutual" (J. Ex. 2 at 2).

Earlier, Mutual had moved to dismiss the revocation proceedings, insofar as they related to Mutual, on the ground that Mr. Batten had divested himself of all of his interest in Mutual. The Commission denied that motion by a separate order of February 14, 1962 (J. Ex. 15), because the terms of the divestiture contemplated Mutual's continuing operation in part for the benefit of Mr. Batten, and it concluded that because Mutual and Batten & Co. were both Mr. Batten's alter egos, "his willful violations of the securities laws, if established by the record, may be considered their willful violations."

On June 7, 1963, petitioners filed a motion with the Commission to set aside the revocation order and to request further hearings. The Commission denied the motion, noting that the contentions made by petitioners had been previously considered and rejected by the Commission when it issued its findings and opinion (J. Ex. 10).

The Facts

Batten & Co., a District of Columbia corporation, was registered with the Commission as a broker-dealer on October 23, 1959 (J. Ex. 7). Mutual, a Maryland corporation, had been so registered on May 30, 1958 (J. Ex. 7). Mr. Batten is the president, treasurer, and a director of Batten & Co., as well as the owner of 99% of its common stock (J. Ex. 7). He is also president, treasurer, and a director of Mutual and owner of 90.9% of its common stock and 100% of its preferred stock (J. Ex. 7). Saber was a corporate shell until January 1960 when it succeeded to the business of an individual proprietorship engaged in boat manufacturing and the retailing of boats and accessories (J. Ex. 6, p. 7). No registration statement under the Securities Act has ever been filed with the Commission or become effective with respect to Saber stock (J. Ex. 3), and prior to May 3, 1960, there was no trading market for its stock (J.S. 7).

On January 22, 1960 (J.S. 6), Saber filed a notification and offering circular with the Commission covering a proposed public offering of its stock pursuant to a claimed exemption from the registration requirements of the Securities Act under Section 3(b) of the Act and Regulation A thereunder. Batten & Co. was named as the underwriter of the proposed public offering on a best-efforts basis and Mr. Batten was a director of the issuer (J. Ex. 6, at 1). The notification and offering circular covered 106,875 shares of Saber's Class B non-voting common stock and 2,500 shares of its Class A common stock; 102,000 shares of the Class B stock to be offered by Saber at \$2 per share with the remaining 4,875 shares of Class B stock, and all of the Class A stock, to be offered on behalf of Mr. Batten and priced "at the market" (J. Ex. 6 at 1).

Under claim of the Regulation A exemption, the public offering of Saber stock began on February 25, 1960 (J.S. 6,7).

Contrasted with the "hot issues"^{2/} that were then a familiar part of the stock market scene, the Saber stock offering was apparently quite "sticky." Commission Rule 256(a) of Regulation A required that purchasers of Saber stock had to be provided with a copy of the offering circular. From this prospective customers were able to learn that, as of January 8, 1960, according to the unaudited balance sheet included in the offering circular, Saber had less than \$24,000 of current assets, giving full credence to the valuation placed on its inventory, as against current liabilities of over \$37,000 (J. Ex. 6, pp. 13-14). Approximately \$3,500 of the current liabilities

2/ The Report of Special Study of Securities Markets of the Securities and Exchange Commission, H. Doc. No. 95, Pt. 1, 88th Cong., 1st Sess., 514 f.f. (1963) shows that in the late 1950's the securities of many small, promotional companies, particularly those in the so-called "glamor industries," became "hot issues" and traded in the market at a substantial premium immediately following their initial offering to the public. By 1960, investors eagerly sought such securities in anticipation of realizing substantial profits. It was a phenomenon of the "hot issue" that the initially strong public demand caused the offering to be completely sold immediately and the market for the stock to jump; this, in turn, tended to stimulate additional investor interest, with resulting market advances. Investor appetite was often further whetted by an aggressive selling campaign backed up by enthusiastic sales literature. See also SEC Securities Exchange Act Release No. 6097, October 23, 1959.

consisted of overdue accounts payable which had been placed in the hands of attorneys for collection (J. Ex. 6, p. 12). Although no earnings statement for Saber was available, the profits of the individual proprietorship in the calendar year 1959 had been only \$2,465, after adjustments for officers' salaries and corporate taxes that would have been paid if the business had been a corporation. In the previous two years, the individual proprietorship, on a similar accounting basis, had suffered losses of \$6,446 and \$7,910 (J. Ex. 6, p. 16).

Thus, after two months had passed from the date the distribution had commenced, a substantial part of the offering at \$2.00 a share remained to be sold. Nevertheless, as we show below, Mr. Batten entered into an intensive campaign of sales solicitation coordinated with substantial market activity by Batten & Co. apparently designed to duplicate the market conditions characteristic of the hot issue. See f.n. 2, supra.

1. The Fictitious Transactions

Commission rules preclude an underwriter of a public offering, during the pendency of that offering, from bidding for, purchasing or inducing the purchase of the securities offered, subject to certain limited exemptions not applicable here, or from selling the securities at any price other than the offering price (see p. 39, infra). Accordingly, for Batten & Co. to have engaged in such activities, it was necessary for it to complete the initial public offering of Saber stock. On May 16, 1960, Batten & Co. filed with the Commission Form 2-A pursuant to Rule 260 of Regulation A, stating that the offering had been completed on May 2, 1960, by the sale of all the Class B stock^{3/} (J. Ex. 4). The Commission found that the certification on the 2-A report that the Saber offering was completed on May 2, 1960 "was incorrect and misleading" (J. Ex. 2 at 2).

The Commission found that at least ten thousand of the Class B shares reported as sold to the public had in fact been transferred to certain controlled accounts in the names of Mr. Batten's relatives and friends, or employees of Batten & Co., on or just prior to May 2, 1960; shortly thereafter, most of these purported sales were reversed although many of the persons

^{3/} The report also stated that all the Class A stock had been escrowed. No question has been raised in these proceedings as to this class of stock.

in whose names the purported transactions were recorded, had neither authorized them nor were even aware of their entry on Batten & Co.'s books and records (id.). As we show below, transactions involving at least 9,000 of these shares recorded in ten different accounts, were fictitious.^{4/} According to Batten & Co.'s books, these friends, relatives and employees purchased the Saber stock at \$2 per share. But on May 4, 1960, Mr. Batten caused the reversal of the transactions recorded in five of those accounts, placing the 4,500 shares involved into Batten & Co.'s trading account (Pierce, 500 shares (J.S. 27); Hansford, 1,000 shares (J.S. 51); Shorter, 1,000 shares (J.S. 56); Reiter, 1,000 shares (J.S. 59); and Sines, 1,000 shares (J.S. 8)). The shares were then distributed in the open market at prices ranging from \$2-5/8 to \$4 per share.^{5/} On May 20, 1960, the purported sale of 1,000 shares placed in a sixth account was "cancelled" in a similar fashion (J.S. 28). The remaining shares had not been distributed by June 30, 1960, when Batten & Co. ceased trading in the Saber stock (Br. 11).

^{4/} Other shares placed into controlled accounts may have been executed with the knowledge or authority of the named customers (see e.g., J.S. 62).

^{5/} See J. Ex. 11, 12. The price range computation assumes sales through the trading account on a first in — first out ("fifo") basis continuing through May 27, 1960 (J. Ex. 11).

In the case of each reversed "sale," Mr. Batten caused Batten & Co. to issue checks to the "customer" involved for the repurchase price, which for the May 4 reversals was, in each case, \$2 per share (J.S. 27, J.S. 51, J.S. 56, J.S. 59 and J.S. 8). On that date Batten & Co. was bidding 5 1/4 for the Saber stock in the open market (J. Ex. 13, 14). Although the purported sale in the sixth account was reversed on May 20 for what appeared to be 2 3/4 (J.S. 28) that "customer" emphatically stated under oath that he never ordered or sold the Saber stock (J.S. 44, 45). In each of these six instances, after the checks were issued and without the knowledge, much less authority, of the payees, Mr. Batten endorsed their names to the checks and redeposited the proceeds to the account of Batten & Co. (Sines, J.S. 8; Pierce, J.S. 27-28; Hansford, J.S. 51-52, 56; Shorter, J.S. 56; Reiter, J.S. 59, 62, and Duke, J.S. 28, 44).

Seven of the ten "customers" into whose accounts the 9,000 shares of Saber stock were placed were not aware of the transactions until long after they had been executed. (Sines, J.S. 8; Duke, J.S. 44-45; Hansford, J.S. 51; Renfrow, J.S. 57; Martin, J.S. 57-58; McCreight, J.S. 58; Jones, J.S. 58-59).

Although the other three were solicited by Mr. Batten to purchase Saber stock, they each testified that they never gave a firm commitment (Pierce, J.S. 27-28; Shorter, J.S. 56; Reiter, J.S. 59-62). All three of these transactions were included in the May 4, 1960 reversals with the stock funnelled into Batten & Co.'s trading account for distribution in the open market (J. Ex. 11, 12). Just as in the case of the other customers whose stock was taken up and distributed through the trading account, those three "customers" paid nothing at the outset, they received nothing, and their signatures were endorsed to checks to their order in "payment" for the stock without their knowledge or authority, which checks were then deposited to the account of Batten & Co. (Pierce, J.S. 27-28; Shorter, J.S. 56; Reiter, J.S.-62)

2. The Continuing Distribution

Immediately after it was reported to the Commission on Form 2-A that the Saber offering was completed, Batten & Co. commenced bidding for the stock in the market at gradually increasing prices while also engaged in an intensive sales campaign (J.S. 7, 92, 95).

Between May 3, 1960 and June 30, 1960 Batten & Co. inserted bids for Saber stock in the daily sheets of the National Quotation Bureau on 35 different days (J.S. 7, Ex. 14). For 25 days its bid

was not exceeded by any other dealer (J. Ex. 13) and on 12 of those days, its bid alone was the high bid (J. Ex. 13).

Mr. Batten also arranged with the local quotations committee of the National Association of Securities Dealers ("NASD") for the publication of retail quotations for Saber stock in local newspapers.^{6/} The chairman of that committee testified that he looked to Batten & Co., as the most prominent dealer in the Saber stock, for the market quotations (J.S. 92).

As leader of the market for Saber stock, during the period from May 3, 1960 to June 30, 1960, Batten & Co., through its trading account, purchased 17,980 shares, consisting of 12,480 shares purchased in the open market and the 5,500 shares "repurchased" by the reversal of the "sales" in the original offering to Mr. Batten's friends or relatives and to Batten & Co.'s employees. At the same time, it sold through its trading account

^{6/} The NASD is an association of securities brokers and dealers registered with the Commission pursuant to Section 15A of the Exchange Act. Its retail quotation system compiles the various lists of price quotations for over-the-counter securities which are published in most newspapers. For this function the country is divided into various districts, each serviced by a local quotations committee which undertakes to gather quotations for those securities of most interest in its region. See discussion in Report of Special Study of Securities Markets of the Securities and Exchange Commission, H. Doc. No. 95, Pt. 2, 88th Cong., 1st Sess., 630-634 (1963).

17,996 shares. In addition, during the same period, Batten & Co. sold another 6,555 shares on an agency basis (J.S. 95, J. Ex. 11).

In order to stimulate sales of Saber stock, Batten & Co. published and distributed (J.S. 71) to prospective customers a "Market Research Letter" (J. Ex. 5), dated June 14, 1960, which enthusiastically recommended the purchase of Saber stock. That report designated a possible price level for Saber stock, by the end of 1960, of from \$12 to \$15 per share. It also compared the price earnings ratio of Saber stock with that of other "recreational" stocks, thereby indicating that Saber was then selling at a bargain ratio. ^{7/} The report failed to disclose that Saber had only been formed in 1960 and had succeeded to the business of an individual proprietorship which, in turn, had been established for only three years (J. Ex. 6, pp. 2, 7). Nor did the report contain any mention of Saber's shaky financial condition

^{7/} During this period, Batten & Co. also published and distributed another report under the heading "Market Research Division" and entitled "Boat Stocks and Growth Stocks". It provided data on certain selected stocks of boat manufacturing companies where there had been a dramatic price increase, ostensibly to invite inquiries on those stocks. (See, J. Ex. 5).

(see pp. 5-6, supra). This had been disclosed in the original offering circular, but if the distribution had ended on May 2, 1960, the circular no longer would have to be supplied to purchasers.

The brochures distributed by Batten & Co. served as the springboard for its salesmen's oral predictions of spectacular price increases which were passed off as certainty. Customers were told that Saber stock would go up to \$10 or \$12 by the end of 1960 (J.S. 65); that the stock would triple in price (J.S. 71); that the stock would rise from \$5 to \$7 per share by the following week (J.S. 74); and that the stock could be expected to rise to between \$7 and \$10 per share in short order (J.S. 77). During the period May 3, 1960 to June 30, 1960, Batten & Co. employed 5 or 6 salesmen under Mr. Batten's direct supervision. To encourage the sale of Saber stock, Mr. Batten held sales meetings and conducted a sales contest, but he never instructed the salesmen to disclose that the market price of Saber stock was subject to the influence of Batten & Co.'s extensive trading activities. Nor were customers to be told that the initial distribution in fact was continuing notwithstanding the 2-A report filed with the Commission (J.S. 87).

Batten & Co.'s market trading activities and its sales campaign for Saber stock came to a halt at the end of June 1960 when the financial problems of Saber could no longer be concealed and no amount of enthusiasm could stimulate any further interest (J. Ex. 11, 12, 14). It then became known that Saber's payroll checks were being returned for insufficient funds and, shortly thereafter, the company ceased operations completely (J.S. 113 ff).

By that time, however, Batten & Co. had succeeded in distributing to the public, at prices substantially in excess of the offering price of \$2 per share, 5,500 of the 9,000 shares which it had withheld through the entry of fictitious transactions on its books and records. It had maintained a profitable trading operation for almost two months, and in a market of steadily rising prices for most of that time, it had been able to turn over 18,000 shares (J. Ex. 11). After June 30, 1960 interest in Saber stock, as evidenced by published bids, was nil (J. Ex. 14) and the public investment had become substantially worthless.

It was upon the basis of the foregoing facts, after an independent review of the record, that the Commission determined that the hearing examiner had correctly concluded that Batten & Co. and Mr. Batten violated the securities registration, antifraud and record-keeping provisions of the federal securities laws in the offer and sale of Saber stock, and that the public interest required the revocation of the broker-dealer registrations of Batten & Co. and Mutual and that Mr. Batten be named as a cause. Petitioner has raised a question with respect to the propriety of a finding of the Commission respecting the legal title of Saber to the property of which it claimed ownership (Br. 21). That finding was incorporated in a separate final order (J. Ex. 9) of the Commission entered November 28, 1962, pursuant to Rule 261 of Regulation A, whereby the Commission permanently suspended the exemption from registration for the Saber stock offering. No appeal has been taken from that order and the question is not before the Court.

Statutes and Rules Involved

Numerous provisions of the Securities Act of 1933 and Regulation A thereunder, as well as of the Securities Exchange Act of 1934 and rules thereunder, are relevant to the issues raised by this appeal. The provisions most directly involved are Sections 3(b), 5(a) and (c) and 17(a) of the Securities Act and Regulation A, and Sections 10(b), 15(a), 15(b), 15(c)(1), 15A(b)(4), 17(a) and 25(a) of the Exchange Act and Rules 10b-5, 10b-6, 15c1-2, and 17a-3 thereunder. The pertinent portions of these provisions, except for those included in petitioners' brief, are set forth in a separate appendix to this brief.

SUMMARY OF ARGUMENT

1. It has been repeatedly and authoritatively held that the antifraud provisions of the federal securities laws are not confined to concepts of common law fraud. They are grounded on the proposition that a dealer in securities must deal fairly with his customers and must have a reasonable basis for his representations and recommendations in the sale of securities to them. Petitioners' conduct in the sale of Saber stock fell far short of these standards. While conducting an aggressive sales campaign during the period May 3 through June 30, 1960, petitioners predicted dramatic increases in the market price of Saber stock at a time when they must have known of the company's weak financial condition. The Commission properly found that these predictions were unfounded and constituted violations of the antifraud provisions contained in Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.

2. There was substantial evidence to support the Commission's finding that the distribution of Saber stock, pursuant to a claimed exemption from the registration provisions of the Securities Act under Regulation A, continued after May 2, 1960, as of which date petitioners reported that the distribution had been completed. Nine thousand shares of this offering had been placed in the accounts of persons who had not purchased the securities and were wholly fictitious

transactions, as shown by the subsequent reversal of most of these transactions and the distribution of the shares at prices greatly in excess of the earlier public offering price. Petitioners' explanation that certain of these shares were intended as "gifts" is wholly discredited by the evidence, as are their other attempted explanations. Accordingly the Commission properly found that the public offering of Saber stock had not been completed by May 2, 1960, and that there had not been compliance with the provisions of the exemption involved, with a consequent violation of the registration provisions of the Securities Act. Any element of retroactivity is inherent in the conditional nature of the exemption claimed by petitioners; moreover here, the sales of the original offering continued after petitioners had failed to meet the conditions of the exemption.

3. Petitioners' activities in bidding for, purchasing and inducing the purchase of Saber stock, while completing a public distribution of that stock, were part of their deliberate scheme to obtain prices in excess of the announced offering price. These activities were in direct conflict with Section 10(b) of the Exchange Act and Rule 10b-6 thereunder. That rule codifies the long-established Commission view that such market activities of participants during the pendency of a distribution constitute manipulative and deceptive practices.

4. The false entries in petitioner Batten & Co.'s books were an integral part of petitioners' deliberate and calculated scheme to violate the registration and antimanipulative provisions of the federal securities laws. As such, they constituted willful violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, which specify the records to be kept by securities dealers and presuppose that they be accurate.

5. The sanction necessary to protect investors from the type of violations engaged in here is necessarily a matter for the Commission's judgment. Section 15(b) of the Exchange Act specifically contemplates revocation of the registration of brokers and dealers in securities, if in the public interest and if any officer, director or controlling person of a registrant has willfully violated the provisions of the Securities Act or of the Exchange Act. Since petitioner Batten was an officer, director and owner of over 90 percent of the outstanding stock of both petitioners Batten & Co. and Mutual, each of which was registered as a broker and dealer in securities, and since he was the cause of the serious violations of the federal securities laws found by the Commission, the order of revocation against both registrants is a proper exercise of the Commission's duty to protect the investing public.

ARGUMENT

- i. BATTEN & CO., TOGETHER WITH OR AIDED AND ABETTED BY MR. BATTEN, IN RECOMMENDING THE PURCHASE OF SABER STOCK BASED UPON UNFOUNDED PREDICTIONS OF FUTURE PRICE RISES, VIOLATED SECTION 17(a) OF THE SECURITIES ACT AND SECTIONS 10(b) AND 15(c)(1) OF THE EXCHANGE ACT AND RULES 10b-5 AND 15c1-2 THEREUNDER.

Saber was a new company and in view of its financial condition (see pp. 5-6, supra) its prospects were highly speculative. Batten & Co., as the underwriter of the offering, and Mr. Batten, as a director of the issuer and in complete control of Batten & Co., must have known of Saber's continuously increasing financial problems, culminating in its inability to cover its payroll checks and its ultimate cessation of operations. Nevertheless, although 9,000 shares of the public offering had not been sold at \$2 per share by May 2, 1960, Batten & Co., the most prominent dealer in the Saber stock, publicly bid \$5-1/4 for the stock on May 4, and continued to lead the market through June 30, 1960 (see pp. 10-11, supra), during which time it continued to sell the stock at a profit (see J. Ex. 11, 13 and 14). This was accomplished in part through distribution of a "Market Research Letter" predicting a "possible price level" by the end of the year from \$12 to \$15 per share and by Batten & Co.'s utilizing its salesmen to predict comparably spectacular price increases.

While these facts are essentially undisputed, petitioners urge that they were merely expressions of "optimism in a stock", and "bona fide belief of the representatives and Batten, himself," and as such, their use as an inducement to the sale of Saber stock did not constitute fraud (Br. 19). Petitioners' argument is grounded upon a misconception of the operation of the antifraud provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder. Those provisions proscribe not only misstatements or omissions to state material facts but also the use of any device, scheme or artifice to defraud and any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. As the Supreme Court recently said in another but similar context, Congress intended securities antifraud legislation to be construed "not technically and restrictively, but rather flexibly to effectuate its remedial purposes." Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., ___ U.S. ___ 84 Sup. Ct. 275 (1963).

Fraud within the meaning of the securities laws cannot be confined to the ordinary concept of common law fraud, as petitioners apparently urge. Because "securities are intricate merchandise,"^{8/}

^{8/} H. Rep. No. 85, 73d Cong., 1st Sess. (1933) p. 8.

this Court long ago held that the securities industry "by its nature, requires specialized and unique legal treatment." Arleen Hughes v. Securities and Exchange Commission, 85 U.S. App. D.C. 56, 62, 174 F. 2d 969, 975 (1949). The "public needs special protection in this specialized field." Norris & Hirschberg v. Securities and Exchange Commission, 85 U.S. App. D.C. 268, 273, 177 F. 2d 228, 233 (1949). The Commission's responsibility under the statutes must be enforced "notwithstanding the frauds to be suppressed may take on more subtle and involved forms than those in which dishonesty manifests itself in cruder and less specialized activities." Archer v. Securities and Exchange Commission, 133 F. 2d 795, 803 (C.A. 8, 1943), certiorari denied, 319 U.S. 767 (1943).

Grounded upon this general antifraud philosophy, the rule that the investor in securities must "be dealt with fairly and in accordance with the standards of the profession"^{9/} has become the basis of the customer-dealer relationship. Implicit in the obligation of fair dealing is the securities dealer's representation, upon hanging out his "shingle," that he is qualified to engage in the business both by his knowledge and understanding of the field and his standard of conduct. Charles Hughes & Co. v. Securities and

^{9/} Duker & Duker, 6 S.E.C. 386 (1939).

Exchange Commission, 139 F. 2d 434, 436-437 (C.A. 2, 1943); see also MacRobbins & Co., Inc., SEC Securities Exchange Act Release No. 6846 (July 11, 1962), affirmed, sub nom. Berko v. Securities and Exchange Commission, 316 F. 2d 137 (C.A. 2, 1963); Barnett & Co. v. Securities and Exchange Commission, 319 F. 2d 340 (C.A. 8, 1963); Pinsker & Co., 40 S.E.C. 285 (1960); Best Securities, 39 S.E.C. 931 (1960). These standards of conduct must be set at the highest level where, as here, the securities dealer specializes in the stocks he recommends to his customers. In the words of the Supreme Court:

"It requires but little appreciation . . . of what happened in this country during the 1920's and 1930's to realize how essential it is that the highest ethical standards prevail' in every facet of the securities industry."

10/ Berko v. Securities and Exchange Commission, 316 F. 2d 137, 142 (C.A. 2, 1963). See also Norris & Hirshberg v. Securities and Exchange Commission, 85 U.S. App. D.C. 268, 271-272, 177 F. 2d 228 at 230-231 (1949), and Loss, Securities Regulation, 2d ed. (1961), p. 1474 f.f. with respect to the duties of a firm specializing in and dominating the market for a stock.

11/ Securities and Exchange Commission v. Capital Gains Research Bureau, ___ U.S. ___ 84 Sup. Ct. 275 (1963), quoting Silver v. New York Stock Exchange, 373 U.S. 341, 366 (1963).

Petitioners urge that they were as duty-bound to permit their salesmen to give opinions as to the expected future price levels of Saber stock as they were to require them to refrain from doing so (Br. 19). But, as securities dealers, their obligation of fair dealing required that there be a reasonable basis of fact for any such expressions of opinion. As noted in Barnett v. Securities and Exchange Commission, 319 F.2d 340, 343 (C.A. 8, 1963):

"A dealer cannot close his eyes to obvious facts and come into court claiming lack of knowledge."

See also Berko v. Securities and Exchange Commission, 316 F.2d 137, 143 (1963), where, in sustaining a finding that a salesman was a cause of the revocation of a securities dealer, the Court of Appeals for the Second Circuit said:

"Moreover, at a time when the stock of Sports Arenas, Inc., was selling for \$7 per share, he represented to Thurn that there was a good possibility that it would rise to as high as \$15 per share within a year. No adequate basis existed, as Berko should have known, for such an optimistic representation."

Similarly, it was stated in Securities and Exchange Commission v.

F. S. Johns & Co., 207 F. Supp. 566, 573 (D. N.J. 1962):

"Nor may refuge be sought in the argument that representations made to induce sale of stock dealt merely with forecasts of future events relating to projected earnings and the value of the securities, except to the extent that there is a rational basis from existing facts upon which such forecast can be made, and a fair disclosure of the material facts."

Indeed, the Commission has stated that in its experience "such
12/
predictions have been a hallmark of fraud."

In the factual context here involved, it is clear that the specification of expected price levels by Batten & Co. and its salesmen, in order to induce customers to purchase the Saber stock, was fraudulent. Petitioners, in effect, admit that there was no reasonable basis for the predictions. The future price predictions of the salesmen represented only their optimism gained as a result of sales meetings held by Batten & Co.; it was based upon nothing more than a hope that the stock would go up (Br. 4). This clearly falls short of the rational basis required to support such price predictions regardless of whether couched as opinion or fact.

12/ MacRobbins & Co., Inc., SEC Securities Exchange Act Release No. 6846, July 11, 1962, p. 5, affirmed, sub nom. Berko v. Securities and Exchange Commission, 316 F. 2d 137 (C.A. 2, 1963). See also Aircraft Dynamics International Corporation, SEC Securities Exchange Act Release No. 7113, August 9, 1963; Alexander Reid & Co., Inc., SEC Securities Exchange Act Release No. 6727, February 9, 1962.

Similarly, it was fraudulent for Batten & Co. to prepare and distribute the sales literature comparing Saber, a new venture with no real operating history, with other established companies (see p. 4, infra.) Such express or implied recommendations of promotional companies, through misleading or incomplete comparison with long existing companies, cannot be condoned. Aircraft Dynamics International Corporation, supra, n. 12 : The Whitehall Corporation, 38 S.E.C. 259, 266-267 (1958).

**II. BATTEN & CO. AND MR. BATTEN SOLD SABER STOCK
IN VIOLATION OF SECTION 5 OF THE SECURITIES
ACT BY FAILING TO COMPLY WITH THE TERMS AND
CONDITIONS OF THE REGULATION A EXEMPTION FROM
REGISTRATION.**

As the Commission found, on May 2, 1960, Mr. Batten and Batten & Co. retained control of over 10,000 of the 106,875 Saber Class B shares publicly offered at \$2.00 per share pursuant to the claimed Regulation A offering. Although reflected as purchases on Batten & Co.'s books, as we have seen, transactions representing 9,000 shares were wholly fictitious, and shortly

after May 2, Batten & Co. distributed in the open market 5,500 of these shares at prices in excess of the public offering price. On the basis of the foregoing, the Commission properly found that the public offering of 106,875 shares of Saber stock, contrary to Batten & Co.'s report filed with the Commission, had not been completed by May 2, 1960.

Under the standard of review provided by Section 25(a) of the Exchange Act "[t]he finding of the Commission as to the facts, as supported by substantial evidence, shall be conclusive." It has been held that under this standard of review, there need not even be a fair preponderance of evidence in order to sustain the Commission's findings. Wright v. Securities and Exchange Commission, 112 F. 2d 89, 94 (C.A. 2, 1940).^{13/}

Petitioners, nevertheless, ask this Court to find that the public offering had been completed on May 2, 1960 because, they allege, Mr. Batten purchased 4,500 shares as gifts for his friends and relatives and employees of Batten & Co. and Saber

^{13/} Cf. Archer v. Securities and Exchange Commission, 133 F. 2d 795, 799 (C.A. 8, 1943), certiorari denied, 319 U.S. 767 (1943); Hartford Gas Co. v. Securities and Exchange Commission, 129 F. 2d 794, 796 (C.A. 2, 1942).

received the proceeds from the 102,000 shares offered on its behalf (Br. 3, 15). Petitioners' explanation as to the 4,500 shares intended as gifts is wholly discredited by the evidence. At least until the Commission investigation had commenced and Saber had closed its principal place of business, the transactions had not been confirmed, the securities had not been delivered and the alleged donees had not been informed of their "gifts" (J.S. 8-9, 57-59). Up to that time, Mr. Batten had retained complete control of these shares and absolute freedom to change his mind. Thus, in one instance, on May 4, Mr. Batten transferred 1,000 "gift" shares from the account of his sister-in-law and her husband to Batten & Co.'s trading account, endorsed their names to Batten & Co.'s check for the "purchase" price without their authority or knowledge, and distributed the shares in the open market (J.S. 8-9). Subsequently, Mr. Batten influenced his sister-in-law's husband to testify in the proceedings before the Commission that he had ordered and purchased the securities. He later recanted this testimony so that his "conscience would be relieved" (J.S. 16). Under these circumstances, both the hearing examiner and the Commission properly refused to credit Mr. Batten's testimony that the 1,000 shares were sold only because of a serious unexpected illness of his wife and that the 3,500 unsold shares also were intended as personal gifts.

Petitioners do not attempt to rely on a "gift" theory to explain the sales after May 2, 1960 of the other 4,500 shares from the public offering. Instead they assert that these were Mr. Batten's own personal shares to be offered "at the market" (Br. 16). But this does not explain why these shares were placed in five different accounts of persons who had not purchased them. Two of these persons knew nothing about the transactions until long afterwards (J.S. 28, 44-45, 51-56). Two others had indicated a willingness to purchase some Saber stock only if Mr. Batten loaned them the money and, when it was clear that they would not ratify the transactions, Mr. Batten transferred these securities into Batten & Co.'s trading account (J.S. 27-28, 56). In another instance, Mr. Batten placed a thousand shares into the account of an employee of Batten & Co. who had indicated he would purchase the shares only if the stock would "take off" during the trading period. By May 4, 1960 the employee had disaffirmed the transaction ^{14/} (J.S. 59-62). In four of the five cases, although no payment had been received, Mr. Batten caused Batten & Co.'s books to show that

^{14/} In the fifth transaction Batten & Co.'s books show a "repurchase" at 2 3/4 on May 20, 1960, and a check for \$2,750 drawn to the name of the "customer" was endorsed by Mr. Batten. At the hearing, the customer testified that he knew nothing about the transaction and emphatically denied that he ever saw the check or received any part of the proceeds (J.S. 28, 44-51).

the stock was "repurchased" on May 4, 1960 at \$2 per share, and checks issued for the purchase price were endorsed by Mr. Batten without the knowledge or authority of the payees (J.S. 27-28, 51-56, 59-62). Mr. Batten apparently failed to realize, however, that the "repurchases" at the public offering price were clearly inconsistent with any attempt to characterize the purchases as bona fide transactions, since at the time, Batten & Co. was bidding for and purchasing the stock in the open market at substantially higher prices.

The Regulation A notification and offering circular filed with the Commission make clear that Mr. Batten's 4,875 shares of Class B Saber stock were part of the public offering, and until these shares had been distributed, the offering was not completed. As the Commission has repeatedly pointed out "the distribution of securities comprises the entire process by which in the course of a public offering the block of securities is dispersed and ultimately comes to rest in the hand of the investing public."^{15/} Since a substantial portion of the shares for which a Regulation A exemption was

15/ Hamilton Oil and Gas Corporation, 40 S.E.C. 796, 802 (1961); Lewisohn Copper Corporation, 38 S.E.C. 226, 234 (1958); Oklahoma-Texas Trust, 2 S.E.C. 764, 769 (1937), aff'd., Oklahoma-Texas Trust v. Securities and Exchange Commission, 100 F. 2d 888 (C.A. 10, 1939).

sought were still being distributed after May 2, 1960 at prices in excess of the public offering price, the report of sales filed with the Commission pursuant to the requirements of Rule 260 of Regulation A, which stated that the offering was completed on May 2, 1960, was false. Also, the offering circular filed with the Commission pursuant to the requirements of Rule 256(f) was false and misleading because it did not disclose that 9,000 shares of the Saber Class B stock were being offered at a market price subject to the influence of Batten & Co.'s extensive trading and selling activities.^{16/} Accordingly, the record clearly supports the Commission's findings that in the public offering of Saber stock "the terms and condition of Regulation A were not complied with."

^{16/} As the Commission's Division of Trading and Exchanges stated in a 1959 report on the "Hot Issue" problem (SEC Securities Exchange Act Release No. 6097, at 2, October 23, 1959):

"The registration statement and prospectus, or the offering circular may be materially misleading because of the failure to disclose the actual plan of distribution and the marketing arrangements for the issue. The usual representations in these documents imply that the securities will be offered to the public by the underwriters and selected dealers at the public offering price. The disclosures are misleading if, in fact, substantial blocks of shares are not to be offered to the public at the prospectus price, but rather are to be allotted to 'insiders', trading firms and others who may be expected to reoffer at a higher price." [Footnote omitted.]

Despite these wholly deceptive efforts towards compliance with the requirements of Regulation A, petitioners claim that because the exemption was "applied for" (Br. 14) by the filing of a notification and offering circular with the Commission, Batten & Co. was entitled to rely upon Regulation A until the Commission formally declared it was unavailable. On this ground, although they offered and sold Saber stock without complying with the terms and conditions of Regulation A and without the filing of a registration statement for such stock with the Commission, petitioners characterize as "retroactive" and "ex post facto" (Br. 15) the Commission's finding that Batten & Co. and Mr. Batten violated Section 5 of the Securities Act. Petitioners' contentions are based upon a basic misconception of the scope and operation of Regulation A.

Under Section 3(b) of the Securities Act, Congress entrusted to the Commission the determination of whether, and under what conditions, an exemption from the registration requirements of the Act should be provided for public offerings of securities not exceeding \$300,000. Such an exemption not only renders inapplicable the registration requirements but also the civil liabilities imposed by Section 11 of the Securities Act for false and misleading statements in the registration statement. For this

reason, Congress, at the time of the enactment of the Securities Act, made clear that the Commission's exemptive powers under Section 3(b) were "expected to be used only in a sparing manner."^{17/} Pursuant to this Congressional directive, in Regulation A the Commission has provided the structure for the operation of the exemption while also providing in Rule 252(a) of Regulation A, that the exemption shall apply only "if offered in accordance with the terms and conditions of this Regulation," This Court, in rejecting a challenge to the operation of the Commission's Rule 252 under Regulation A, has only recently noted that the original Congressional purpose has been realized by the present provisions of Regulation A. R. A. Holman & Co., Inc. v. Securities and Exchange Commission, 112 U.S. App. D.C. 43, 48, 299 F. 2d 127, 132-133 certiorari denied, 270 U.S. 911 (1962).

In this context, the availability of a Regulation A exemption must be conditioned upon strict compliance with the express provisions and standards of its rules.^{18/} To hold otherwise would be to provide

^{17/} H. Rep. No. 85, 73d Cong., 1st Sess. (1933) 6-7.

^{18/} Securities and Exchange Commission v. Searchlight Consolidated Mining Co., 112 F. Supp. 726 (D. Nev., 1953); Hamilton Oil and Gas Corporation, 40 S.E.C. 796 (1961); Texas-Angello Petroleum Exploration Co., 39 S.E.C. 292 (1959); Dix Uranium Corporation, 37 S.E.C. 828 (1957).

insulation against violation of Section 5 of the Securities Act by a mere formal compliance with the requirements of Regulation A, regardless of how inadequate and deceptive it may be. As the Court in Searchlight Consolidated Mining said (112 F. Supp. at 729):

"Defendants' difficulty is due to their failure to recognize that by this subsection [3(b) of the Securities Act] the Commission is authorized to make rules and regulations and is authorized to add classes of exempted securities only subject to such terms and conditions as may be prescribed in the Commission's rules and regulations. Not only is a letter of notification necessary but compliance with the terms and conditions must be made for the securities to be expressly exempted from provisions of the Act."

This result follows from the general pattern of the statute. Section 5 of the Act on its face requires registration for any sale of securities by the mails or instruments of interstate commerce. Section 3 specifies various securities or issues of securities which are to be exempted. In some of these, such as Section 3(a)(2) through 3(a)(8), the exemption depends upon the nature of the securities, while in Sections 3(a)(1), 3(a)(10) and 3(a)(11) the exemption depends, as does the exemption under 3(b), upon the nature of the transaction in which the security is sold or issued. As to all of these, the availability of the exemption necessarily depends upon whether or not the security or the transaction in fact is of the character Congress has specified, - i.e.,

whether it meets the specified terms and conditions - and, if
not, the offering violates Section 5.^{19/}

The existence of the suspension procedure in Regulation A does not militate against that conclusion. The suspension procedure serves three principle purposes: (1) if the Commission believes that the exemption was not available, it destroys any claim of reliance upon the exemption pending a final determination of that question, (2) it affords the issuer and underwriter an opportunity for hearing and for an authoritative determination by the Commission as to whether or not the exemption is available for the guidance of the parties and all other interested persons and (3) it invokes the disqualifications against further use of

19/ See, e.g., Securities and Exchange Commission v. Hillsborough Investment Corp. (D. N.H., 1959) aff'd., sub nom. Hillsborough Investment Corp. v. Securities and Exchange Commission, 276 F. 2d 665 (C.A. 1, 1960), holding that an exemption under Section 3(a)(11) of the Securities Act, which relates to sales to residents of a single state, was destroyed by sales to non-residents and thereafter not available for future sales to residents of the state. The Court also suggested that all prior sales of the issue may likewise have violated Section 5.

Regulation A by issuers, underwriters and others which, under the rule, follow from a finding that the exemption has been abused. In a case such as this, it serves merely as a declaration that the exemption is not available because there has been a failure to comply with the terms and conditions thereof.

The issuance of a suspension order by the Commission certainly is not a necessary prerequisite to the non-availability of the exemption. Nothing in the rules so provides, and if an issuer or underwriter disregards the conditions of the exemption, it violates Section 5 whether or not the Commission ever learns of the matter or issues a suspension order. A contrary result would make the investors' rights under Section 12 of the Act to rescind purchases for noncompliance with the registration provisions dependent upon the vigilance of the Commission — a result never contemplated by Congress. In essence, the Commission's finding in the suspension proceeding is nothing more, insofar as the availability of the exemption is concerned, than a recital of the fact that the exemption was never in the first instance available.

Certainly if the notification and offering circular for the Saber offering had not been filed with the Commission prior to the commencement of the offering, the exemption would have

been unavailable for the entire offering. Mines & Metals Corp. v. Securities and Exchange Commission, 200 F. 2d 317 (C.A. 9, 1952), certiorari denied, 345 U.S. 941 (1953). Similarly, in Searchlight Consolidated Mining Co., 112 F. Supp. 726, supra, at p. 34, it was held that the failure to file supplemental selling literature pursuant to the requirements of Regulation A destroyed the availability of the claimed exemption and an injunction against continuing violations of Section 5 of the Securities Act was issued. In this same connection, a sale of the securities offered, for more than the \$300,000 ceiling available for the exemption, would also be clearly contrary to the terms and conditions of the Regulation and be in violation of Section 5. Gob Shops of America, Inc., 39 S.E.C. 92 (1959); Sports Arenas (Delaware) Inc., 39 S.E.C. 463 (1959); Hamilton Oil and Gas Corp., 40 S.E.C. 796 (1961). See generally, Loss, Securities Regulation 2d ed. pp. 628-629. By a similar reasoning, the deceitful attempt here to show compliance with the terms of Regulation A by filing a false report of sales and a false and misleading circular, at least destroyed any claim to the exemption for the 5,500 shares of the original offering distributed after

20/
May 2, 1960. Without such a sanction, guile would be placed at a premium and the important protections against abuses provided by the Commission's rules under Regulation A would be rendered meaningless.

20/ It is not necessary here to determine whether the filing of a false report of sales by Mr. Batten and the failure to amend the offering circular destroyed the exemption for the entire public offering of Saber stock. Here the exemption was never available for the sale of the 5,500 shares in question because the distribution of these shares was not made as contemplated in the offering circular and notification and occurred after a false report of sales had been filed.

III. BATTEN AND CO. AND MR. BATTEN, BY BIDDING FOR, PURCHASING, AND INDUCING THE PURCHASE OF SABER STOCK WHILE ENGAGED IN ITS DISTRIBUTION, WILLFULLY VIOLATED THE ANTI-MANIPULATION PROVISIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-6 THEREUNDER.

Rule 10b-6 represents the Commission's effort to codify certain longstanding interpretations of the antifraud and antimanipulation provisions of the Exchange Act. ^{21/} In essence, the rule declares that it is a manipulative and deceptive device for underwriters or other persons participating in or otherwise interested in a distribution of securities to bid for, purchase, or induce the purchase of such securities, for any account in which they have a beneficial interest during the pendency of the distribution. In clear and certain terms, it prohibits such activities subject to various enumerated exceptions. Petitioners make no claim that Batten & Co.'s trading activities in the Saber Class B stock fell into any of these exceptions. Nor can they rely on the fact that during May 1960 Mr. Batten sought advice as to the legality of these activities from a member of the Commission's staff. The record makes clear that Mr. Batten never disclosed in the

^{21/} In 1955, in adopting the present rule, the Commission noted that it was no more than a formulation of principles which had been generally followed. S.E.C. Securities Exchange Act Release No. 5194, July 5, 1955.

several telephone conversations with this staff member that the public offering of Saber stock had not come to rest in the hands of public investors and the staff member necessarily assumed that the distribution had been completed by May 2, 1960 (J.S. 96-103).

Although petitioners avoid any specific mention of the violations of Rule 10b-6 throughout their brief, they generally claim, with respect to the fraudulent and manipulative practices found by the Commission, that there was no actual proof of manipulation or wrongful intent and suggest that no violation of the antifraud provisions of the Securities Act can be found unless Batten & Co.'s activities were "for fraudulent and deceptive purposes" and some particular customer was affected (Br. 18). Proof of these common law elements of fraud is not, however, a prerequisite to findings of violations of the broad antifraud provisions of the federal securities laws. See cases at pp. 21-22, supra. As the Commission said in Sutro Bros & Co., SEC Securities Exchange Act Release No. 7053, April 10, 1963, which involved a distribution comparable to that in the instant

case (p. 8):

"Having found that registrant was an underwriter participating in a distribution of AGR stock, it follows that the placing of bids for the stock in the pink sheets was a violation of Rule 17 CFR 240.10b-6 under Section 10(b) of the Exchange Act."

See also Bruns, Nordeman & Co., 40 S.E.C. 652, 658-659 (1961)

where the Commission reached a similar result, noting:

"The means most commonly used to create a false appearance of activity in the over-the-counter market is the insertion in the sheets of increasingly higher bids."

Such market activities of participants in a distribution create a serious potential for producing artificial market activity and distorting the character of the market as a reflection of the combined judgments of buyers and sellers. As the Court noted in Securities and Exchange Commission v. Electronic Securities Corporation, 217 F. Supp. 831, 836 (D. Minn., 1963) where the defendant broker-dealer had purchased a block of its own securities from one of its officers and distributed them to the public while it was bidding for and acquiring the stock in the market:

"Clearly these transactions constituted a manipulative or deceptive device or contrivance in violation of Section 10(b) and Rule 10b-6 for it is obvious that these purchases by the corporation

helped to keep the market up while the corporation was making its distribution of its stock, and it is for that reason that the Commission has proscribed this type of conduct."

The distribution of Saber stock here involved took place at a time when there was widespread investor interest in "hot issues" which were traded at a premium over the initial offering price. By trading in and soliciting sales of Saber stock, Mr. Batten and Batten & Co. sought to create that premium and complete the public offering. Such manipulative activities fall precisely within the proscriptions of Rule 10b-6.

IV. BATTEN & CO., AIDED AND ABETTED BY MR. BATTEN, ENTERED FICTITIOUS TRANSACTIONS IN SABER STOCK IN ITS BOOKS AND RECORDS IN VIOLATION OF SECTION 17(a) OF THE EXCHANGE ACT AND RULE 17a-3 THEREUNDER.

Pursuant to the authority contained in Section 17(a) of the Exchange Act, the Commission has promulgated Rule 17a-3, which details the books and records required to be kept by registered brokers and dealers. To reflect fully their transactions in securities, the rule requires, among other things, that brokers and dealers keep daily records of all purchases and sales of securities showing the account for which each transaction was effected, separate ledger accounts for each customer

and for the broker and dealer, memoranda of each purchase or sale, and copies of confirmations for each transaction.

Petitioners do not deny that Mr. Batten caused numerous false entries to be made in Batten & Co.'s books and records reflecting purchases and sales that had never been effected and payments that had never been made. Nonetheless, they contend that the false entries did not constitute willful violations because they were not "a necessary part of the modus operandi of the deceit, fraud, and manipulation." (Br. 20.) This contention is without support either in law or in fact.

Reliance on the books and records of brokers and dealers is the keystone of the Commission's surveillance of the securities markets.^{22/} As the Commission observed in P. J. Gruber & Co., Inc.

^{22/} Section 17(a) expressly provides that the books and records required by the Commission "shall be subject at any time or from time to time to such reasonable, periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary and appropriate in the public interest or for the protection of investors." The Commission, as well as the NASD and the principal national securities exchanges, conduct periodic inspections of broker-dealers and other inspections for specific enforcement purposes. See, e.g., 28 SEC Ann. Rep. 71-72.

38 SEC 171, 174 (1958):

"The registration and record-keeping requirements of the securities laws must be fully observed if investors are to receive the full disclosure to which they are entitled and we are to be able to rely on the records of brokers and dealers in performing our functions under the Exchange Act."

If the bookkeeping requirements of Rule 17a-3 are to fulfill their purpose, entries made on the books and records maintained by broker-dealers pursuant to the rule must honestly reflect all transactions which have taken place. In the closely analogous situation involving the requirement to file reports with the Commission under Section 13 of the Exchange Act, the Commission noted, in a decision summarily affirmed with a finding of "no error" by this Court, that "[t]he requirement that reports be filed necessarily embodies the requirement that such reports be true and correct." Great Sweet Grass Oils, Limited, 37 SEC 683, 684 (1957), affirmed, Great Sweet Grass Oils, Limited v. Securities and Exchange Commission, 103 U.S. App. D.C. 179, 256 F. 2d 893 (1958).^{23/}

^{23/} See also Justin, Steppler, Inc., 37 SEC 252, 256 (1956); Junger, Andersen & Co., 31 SEC 747 (1950); Lowell, Niebuhr & Co., Inc., 18 SEC 471, 475 (1945).

This Court also has repeatedly held that willfulness within the meaning of Section 15(b) of the Exchange Act requires "no more than that the person charged with the duty knows what he was doing."^{24/} In the instant case, the record makes clear that the fictitious entries were no mere accidents but a part of a deliberate and calculated scheme to violate the registration and anti-manipulation provisions of the Securities Act and the Exchange Act. Petitioners should not be permitted to dismiss these violations as amounting "to no more than misguided acts to recover funds rightfully his" (Br. 21).

^{24/} Hughes v. Securities and Exchange Commission, 85 U.S. App. D.C. 56, 64, 174 F. 2d 969, 977 (1949); Norris & Hirshberg, Inc. v. Securities and Exchange Commission, 85 U.S. App. D.C., 268, 273, 177 F. 2d 228, 233 (1949); Shuck v. Securities and Exchange Commission, 105 U.S. App. D.C. 72, 77, 264 F. 2d 359, 363 (1958). See also Gilligan Will & Co. v. Securities and Exchange Commission, 267 F. 2d 461, 468 (C.A. 2) certiorari denied, 361 U.S. 896 (1959); United States v. Sussman, 37 F. Supp. 294, 296 (E.D. Pa., 1941).

- V. THE COMMISSION DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE PUBLIC INTEREST REQUIRED THE REVOCATION OF BATTEN & CO.'S AND MUTUAL'S BROKER AND DEALER REGISTRATIONS AND THAT MR. BATTEN BE NAMED A CAUSE.

In questioning the Commission's judgment of the public interest involved in this case (Br. 13), petitioners would embroil this Court in an evaluation of the facts and an exercise of judgment as to what will best protect investors from the type of dealings engaged in by Batten & Co. and by Mr. Batten in the course of the offer and sale of Saber stock. This is a function, however, which Congress reserved to the Commission. As the Court said in Pierce v. Securities and Exchange Commission, 239 F. 2d 160, 163 (C.A. 9, 1956):

"The Commission is given the duty to protect the public. What will protect the public must involve, of necessity, an exercise of discretionary determination. This Court ordinarily should not substitute its judgment of what would be appropriate under the circumstances in place of the Commission's judgment as to measures necessary to protect the public interest."

Indeed, it has become a "fundamental principle . . . that where Congress has entrusted an administrative agency with the responsibility of selecting the means of a statutory policy 'the relationship of remedy to policy is peculiarly a matter for administrative competence.'" American Power and Light Co. v.

Securities and Exchange Commission, 329 U.S. 90, 112 (1946), citing Phelps Dodge Corporation v. Labor Board Comm., 313 U.S. 177, 194 (1941). In American Power and Light Co., the Court went on to note (329 U.S. at 112-113):

"While recognizing that the Commission's discretion must square with its responsibility, only if the remedy chosen is unwarranted in law or is without justification in fact should a court attempt to intervene in the matter."

In urging that the Commission's revocation of Mutual's registration as a broker-dealer was "unjustified and arbitrary" (Br. 20), petitioners ignore the provisions of Section 15(b) of the Exchange Act which expressly provides for revocation of registration where an officer, director, or controlling person has willfully violated any provision of the Securities Act or Exchange Act or the rules and regulations thereunder. As we have seen, Mr. Batten is an officer, director and owner of over 90% of the outstanding stock of Mutual. In the course of the revocation proceeding, the Commission denied a motion by Mutual to dismiss the revocation proceedings, insofar as they related to Mutual, finding that a proposed plan for divestment of Mr. Batten's holdings in Mutual contemplated its continued operation, in part, for his benefit. As the Commission stated: "It would be inconsistent with the statutory pattern of regulation to permit a broker-dealer to departmentalize

his securities business into two or more wholly owned corporations and, by confining his illegal activities to one, to continue, despite detection of the wrongdoing and the finding that it was of a nature requiring revocation, to participate in the profits of the others." (J. Ex. 15).

The violations found by the Commission were part of a deliberate scheme to distribute Saber stock in violation of the registration and the antifraud provisions of the federal securities laws. Contrary to petitioners' characterization of Mr. Batten's conduct, he was Batten & Co.'s alter ego and as such, the sole perpetrator of this fraudulent scheme. The Commission would be derelict in its responsibility of supervising the operations of the securities markets for the protection of investors if it permitted one who has demonstrated such a capacity for chicanery to participate in those markets. Although the penalty or personal injury may be serious, "it is not of controlling importance as primary consideration must be given to the statutory intent to protect investors." Associated Securities Corp. v. Securities and Exchange Commission, 293 F. 2d 738, 791 (C.A. 10, 1961). See also Pierce v. Securities and Exchange Commission, 239 F. 2d 160, 163 (C.A. 9, 1956); Wright v. Securities and Exchange Commission, 112 F. 2d 89, 94-95 (C.A. 2, 1940); N. Sims Organ & Co. v. Securities and Exchange Commission, 293 F. 2d 78, 80 (C.A. 2, 1961), certiorari denied, 368 U.S. 968 (1962).

CONCLUSION

For the foregoing reasons the order appealed from should be affirmed.

Respectfully submitted,

PHILIP A. LOOMIS, JR.
General Counsel

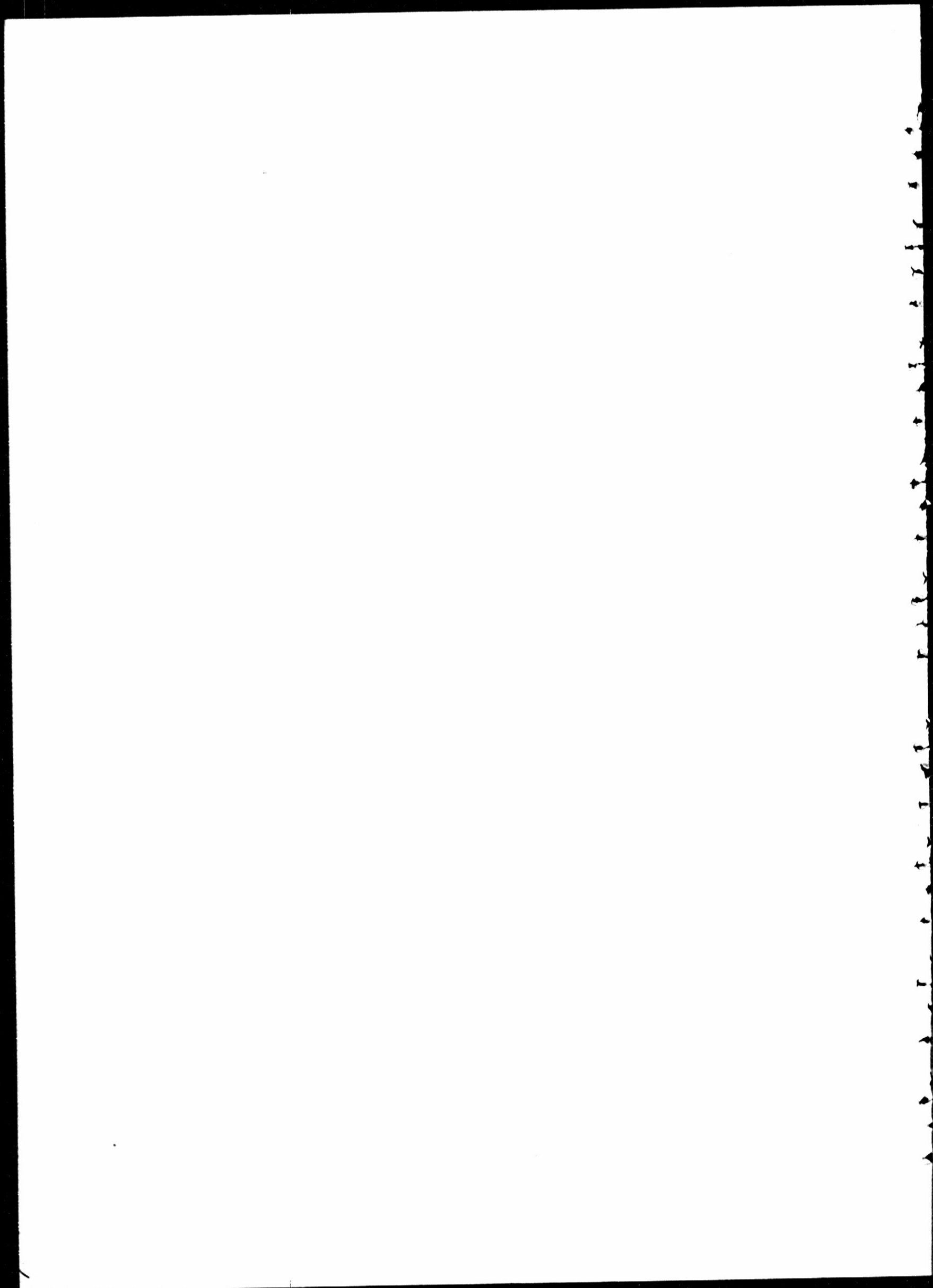
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Washington, D.C. 20549

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Appendix of relevant sections of the Securities
Act of 1933 and the Securities Exchange Act of
1934 and the Rules and Regulations thereunder

SECURITIES ACT OF 1933:

Exempted Securities

* * *

3(b) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$300,000.

[15 U.S.C. 77c(b), 48 Stat. 75]

Regulation A

Rule 252 Securities Exempted

(a) Except as hereinafter provided in this regulation, securities issued by any of the following persons shall be exempt from registration under the Act if offered in accordance with the terms and conditions of this regulation:

(1) Any corporation, unincorporated association or trust (i) which is incorporated or organized under the laws of the United States or Canada or any State or Province thereof and (ii) which has or proposes to have its principal business operations in the United States or Canada; or

[17 CFR 240.252(a)(1)]

Rule 256 Filing and Use of the Offering Circular

(a) Except as provided in paragraph (c) of this rule and in Rule 257—

(1) no written offer of securities of any issuer shall be made under this regulation unless an offering circular containing the information specified in Schedule I of Form 1-A is concurrently given or has previously been given to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the time of such written offer; and

(2) no securities of such issuer shall be sold under this regulation unless such an offering circular is given to the person to whom the securities were sold, or is sent to such person under such circumstances that it would normally be received by him, with or prior to any confirmation of the sale, or prior to the payment by him of all or any part of the purchase price of the securities, whichever first occurs.

* * *

(f) Four copies of the offering circular required by this rule, which is to be used at the commencement of the offering, shall be filed with the notification required by Rule 255 at the time such notification is filed and shall be deemed a part thereof. If the offering circular is thereafter revised or amended, 4 copies of such revised or amended circular shall be filed as an amendment to the notification with the appropriate Regional Office of the Commission at least 10 days prior to its use, or such shorter period as the Commission may, in its discretion, authorize upon a written request for such authorization.

[17 CFR 240.256 (a) and (f)]

Rule 260 Reports of Sales Hereunder

Within 30 days after the end of each 6-month period following the date of the original offering circular required by Rule 256, or of the statement required by Rule 257, the issuer or other person for whose account the securities are offered shall file with the Regional Office of the Commission with which the notification was filed 4 copies of a report on Form 2-A containing the information called for by that form. A final report shall be made upon completion or termination of the offering and may be made prior to the end of the 6-month period in which the last sale is made.

[17 CFR 240.260]

SCHEDULE I—INFORMATION TO BE INCLUDED IN THE OFFERING CIRCULAR REQUIRED BY RULE 256

The offering circular required by Rule 256, or statement required by Rule 257, shall be dated and shall contain the following information:

1. The following statement shall be set forth on the outside front cover page of the offering circular in capital letters in type as large as that used generally in the body of the circular:

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.

2. State the exact name and address of the issuer, the name of the State or other jurisdiction under the laws of which it was incorporated or organized and the date of its incorporation or organization.

3. (a) Give the following information, in the tabular form indicated, on the outside front cover page of the offering circular on a per-share or other unit basis.

Offering price to public	Underwriting discounts or commissions	Proceeds to issuer or other persons

(b) If any of the securities are to be offered for the account of any person other than the issuer, give the name and address of each such security holder, the total amount he owns and the amount to be offered hereunder for his account.

4. (a) State the amount of securities to be offered pursuant to this regulation, the aggregate offering price to the public, the aggregate underwriting discounts or commissions, the amount of expenses of the issuer and the amount of expenses of the underwriters to be borne by the issuer, and the aggregate proceeds to the issuer or security holders for whose account the securities are to be offered.

(b) If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. Describe briefly the method by which the securities are to be offered and if the offering is to be made by or through underwriters, the name and address of each underwriter and the amount of the participation of each such underwriter, indicating the nature of any material relationship between the issuer and such underwriter.

SECURITIES EXCHANGE ACT OF 1934

Section 15(b) provides in pertinent part: Section 15A(b)(4) provides in pertinent part

* * *

The Commission shall, after appropriate notice and opportunity for hearing, by order deny registration to or revoke the registration of any broker or dealer if it finds that such denial or revocation is in the public interest and that (1) such broker or dealer whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such, (A) has willfully made or caused to be made in any application for registration pursuant to this subsection or in any document supplemental thereto or in any proceeding before the Commission with respect to registration pursuant to this subsection any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact; or (B) has been convicted within ten years preceding the filing of any such application or at any time thereafter of any felony or misdemeanor involving the purchase or sale of any security or arising out of the conduct of the business of a broker or dealer; or (C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; or (D) has willfully violated any provision of the Securities Act of 1933, as amended, or of this title, or of any rule or regulation thereunder.

* * *

[49 Stat. 1377, 15 U.S.C. 78o(b)]

(b) An applicant association shall not be registered as a national securities association unless it appears to the Commission that—

* * *

(4) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no broker or dealer shall be admitted to or continued in membership in such association, if (1) such broker or dealer, whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such, (A) has been and is suspended or expelled from a registered securities association (whether national or affiliated) or from a national securities exchange, for violation of any rule of such association or exchange which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade, or (B) is subject to an order of the Commission denying or revoking his registration pursuant to section 15 of this title, or expelling or suspending him from membership in a registered securities association or a national securities exchange, or (C) by his conduct while employed by, acting for, or directly or indirectly controlling or controlled by, a broker or dealer, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such broker or dealer;

[52 Stat. 1070, 15 U.S.C. 78o-3]

Rule 10b-5. Employment of Manipulative and Deceptive Devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

[17 CFR 240.10b-5]

Rule 10b-6. Prohibitions Against Trading by Persons Interested in a Distribution.

(a) It shall constitute a "manipulative or deceptive device or contrivance" as used in section 10 (b) of the Act for any person,

- (1) who is an underwriter or prospective underwriter in a particular distribution of securities, or
- (2) who is the issuer or other person on whose behalf such a distribution is being made, or
- (3) who is a broker, dealer, or other person who has agreed to participate or is participating in such a distribution,

directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, either alone or with one or more other persons, to bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right, until after he has completed his participation in such distribution:

* * *

[17 CFR 240.10b-6]

Rule 15c1-2. Fraud and Misrepresentation.

(a) The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15 (c) (1) of the Act, is hereby defined to include any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) The term "manipulative, deceptive, or other fraudulent device or contrivance," as used in section 15 (c) (1) of the Act, is hereby defined to include any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading.

(c) The scope of this rule shall not be limited by any specific definitions of the term "manipulative, deceptive, or other fraudulent device or contrivance" contained in other rules adopted pursuant to section 15 (c) (1) of the Act.

[17 CFR 240.15c1-2]

Accounts and Records, Reports, Examinations of Exchanges, Members, and Others

SECTION 17. (a) Every national securities exchange, every member thereof, every broker or dealer who transacts a business in securities through the medium of any such member, every registered securities association, and every broker or dealer registered pursuant to section 15 of this title,² shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

[48 Stat. 897, 15 U.S.C. 78q(a)]

Rule 17a-3. Records To Be Made by Certain Exchange Members, Brokers, and Dealers.

(a) Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall make and keep current the following books and records relating to his business:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such account and all other debits and credits to such account.

(4) Ledgers (or other records) reflecting the following:

- (A) securities in transfer;
- (B) dividends and interest received;
- (C) securities borrowed and securities loaned;
- (D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);
- (E) securities failed to receive and failed to deliver.

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such member, broker, or dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such member, broker, or dealer, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a member, broker, or dealer. The term "time of entry" shall be deemed to mean the time when such member, broker, or dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(7) A memorandum of each purchase and sale of securities for the account of such member, broker, or dealer showing the price and, to the extent feasible, the time of execution.

(8) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such member, broker, or dealer.

(9) A record in respect of each cash and margin account with such member, broker, or dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

* * *

Court Review of Orders

SECTION 25. (a) Any person aggrieved by an order issued by the Commission in a proceeding under this title to which such person is a party may obtain a review of such order in the Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, and enforce or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive.

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[48 Stat. 901, 15 U.S.C. 78y(a)]

